



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, DRI, OLC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the following issues: to cancel a notice to end tenancy for cause and unpaid rent; for the Landlord to comply with the *Residential Tenancy Act* (the “Act”); to dispute an additional rent increase; and to recover the filing fee from the Landlord.

Both parties appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings.

Preliminary Issues

The Landlord confirmed receipt of the Tenant’s Application made on February 29, 2016, the Tenant’s amended Application made on March 3, 2016, and the Tenant’s documentary evidence. The Tenant confirmed receipt of the Landlord’s documentary evidence; however, during the hearing, the Tenant brought it to my attention that the Landlord was referring to two pages of evidence which was not in the package that had been served to her. As a result, I dealt with this issue in my findings below.

At the start of the hearing, I asked the Tenant whether she was still residing in the unit and had any intention of voluntarily vacating the rental unit for her own reasons. The Tenant indicated that she was planning on vacating the rental unit but did not know when. As a result, I offered the parties an opportunity, pursuant to Section 63 of the Act, to have a discussion about whether they wanted to end the tenancy by mutual agreement. The parties discussed some dates and voluntarily agreed to end the tenancy on June 30, 2016 at 1:00 p.m. The parties were agreeable to the Landlord being issued with an Order of Possession effective on this date and time which the Landlord may use to enforce the ending on the tenancy.

In addition, the parties agreed that the Tenant may vacate and end the tenancy earlier if she is able to find accommodation before June 30, 2016, providing that the Tenant give the Landlord written notice of the date she intends to vacate the rental unit. The parties agreed that if the date the Tenant vacates is earlier than June 30, 2016, the Tenant will only be required to pay rent for the time period she occupies the rental unit. This may then result in a requirement for the Tenant to pay a prorated amount of rent or for the Landlord to return a prorated amount of rent at the end of the tenancy. For example, if the Tenant gives the Landlord written notice in May 2016 to end the tenancy on June 15, 2016, the Tenant will only be required to pay for half of June 2016 rent; if the Tenant pays full rent for June 2016 and then gives written notice to the Landlord to vacate the rental unit after on June 15, 2016, the Landlord will be required to return half of June 2016 rent paid back to the Tenant at the end of the tenancy.

The parties also disclosed a dispute about several letters and Notices of Rent Increases served to the Tenant during this tenancy which was in dispute. The parties provided evidence in respect to this issue but agreed that as per the last Notice of rent Increase served to the Tenant dated February 29, 2016, the rent will be increased from \$890.00 to \$915.81 which will be payable on June 1, 2016, if the tenancy is still effective for this date.

The Tenant's Application disclosed an issue of whether the Tenant had paid a pet damage deposit, which was one of the reasons why the Tenant was served with the 1 Month Notice to End Tenancy for Cause (the "Notice). The parties requested a decision on this matter so that it was clear to the parties as to how this issue is going to be dealt with at the end of the tenancy.

Therefore, the hearing continued to hear the parties' evidence in this respect. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence on this issue.

Issues(s) to be Decided

Did the Tenant pay a pet damage deposit at the onset of this tenancy?

Background and Evidence

The parties agreed that this tenancy started on March 1, 2015. Rent under the written tenancy agreement was detailed as \$890.00 payable by the Tenant on the first day of each month. The parties agreed that the Tenant paid a security deposit of \$445.00 on

February 20, 2015 which the Landlord still retains. However, the parties were in dispute as to whether the Tenant had paid a pet damage deposit.

The Tenant's testimony was that she paid the Landlord a security deposit in the form of a bank draft before the tenancy started on February 20, 2016; no written tenancy agreement was completed at that point. The Tenant informed the Landlord that she had pets and the Landlord then requested a pet damage deposit in the amount of \$350.00. The Tenant testified that approximately two weeks into the tenancy, they then signed a tenancy agreement and the Tenant provided the Landlord with \$350.00 in cash as a pet damage deposit on March 17, 2015.

The Tenant provided a copy of the tenancy agreement into evidence which shows on page 3 that the Tenant is required to pay \$445.00 as a security deposit on February 20, 2015, and a pet damage deposit of \$350.00 on March 17, 2015, which she testified she did. However, the Landlord had provided a copy of the same tenancy agreement which shows the same signature of the Landlord on both copies, but with differing details on page 3. The Landlord's copy shows that the security deposit of \$445.00 is to be paid on February 20, **2016** and **\$375.00** as a pet damage deposit is "**TO BE PAID ASAP**" (differences are highlighted in bold). The Tenant submitted that the Landlord doctored the tenancy agreement to show that the pet damage deposit was still outstanding and when the Landlord doctored it he made a mistake by showing the security deposit was payable in 2016 and increasing the amount from \$350.00 to \$375.00.

The Tenant testified that she had paid the pet damage deposit to the Landlord in cash but the Landlord failed to give her a receipt for this. The Tenant testified that for the months of July 2015 to January 2016 she paid rent to the Landlord by cash and at no point did the Landlord provide the Tenant with a cash receipt. The Tenant testified that the Landlord did not address the issue of the alleged failure to pay the pet damage deposit until January 21, 2016. At this time the Landlord sent her a written letter, which was provided into evidence by the Tenant, which stated that the Tenant had lied about having a pet in the rental unit and that she had failed to pay the pet damage deposit.

The Tenant testified that she made multiple attempts to speak with the Landlord by phone to clear this issue up but the Landlord failed to return her calls. As a result, the Tenant wrote to the Landlord on February 4, 2016 explaining that she had not received a response to the voicemail messages she had left for the Landlord and that she wanted to resolve and confirm the payment she had made of the pet damage deposit at the start of the tenancy. She also requested a receipt for this to prevent any future issues. However, after this point the Tenant started to receive communication from the

Landlord who alleged that the Tenant had not paid the pet damage deposit resulting in her being served the Notice on February 27, 2016.

The Landlord testified that he did not dispute the Tenant had paid the security deposit on February 20, 2015. In relation to the differences in the tenancy agreement provided by the parties, the Landlord was unable to explain why the Tenant had been provided or was in possession of a tenancy agreement that differed to the one he had provided. The Landlord explained that the date relating to the payment of the security deposit was a mistake on his behalf but could not offer any explanation as to why the amount of the pet damage deposit and the date it was to be paid differed.

The Landlord testified that he had attempted to deal with the issue of the nonpayment of the pet damage deposit by the Tenant as he sent the Tenant two breach letters, one dated April 1, 2015 and one dated August 1, 2015 in which the Landlord requested the Tenant to pay the pet damage deposit. At this point, the Tenant explained that she did not get any breach letters served to her for these dates and that the two letters that the Landlord was referring to in her evidence were not supplied by the Landlord in the package of evidence served to her. The Landlord testified that he had served these to the Tenant during the tenancy and for this hearing.

The Landlord confirmed that he had not provided the Tenant receipts for rent payments the Tenant had made in cash. When the Landlord was asked why he did not provide receipts, he explained that he has a rule that if residents of the building do not ask for a cash receipt then he does not issue one, and this is normal and regular practice the Landlord engages in with many other residents. The Landlord submitted that the Tenant has provided no proof that she paid the pet damage deposit and therefore one is not in existence.

Analysis

In making my findings on the issue to be decided, I first turn to Section 26(2) of the Act which requires that a landlord must provide a tenant with a receipt for rent paid in cash. In this case, I find the Landlord failed to provide the Tenant with receipts when the Tenant paid her rent in cash as required by the Act. I find the Landlord's practice and understanding that he does not have to provide a rent receipt if a party does not ask for it is contrary to the Act and this practice should immediately cease. In this case, had the Landlord made it his practice to issue receipts for payments made by cash during the course of this tenancy, this could have provided merit to the Landlord's testimony that the Tenant failed to pay the pet damage deposit.

In addition, having balanced the discrepancies outlined in the tenancy agreements provided by the parties, I am unable to determine the correct version of this document as both have been signed by the Landlord. However, I am puzzled by the fact that the Landlord's version of the tenancy agreement contains a mistake in the date that the security deposit was paid which would lend credibility to the Tenant's assertion that the Landlord changed the agreement after the version she was provided with.

However, I find that the stronger and convincing evidence lies in the parties' resolution attempt of this matter following the onset of the tenancy. The Tenant asserted that the Landlord did not bring this alleged nonpayment of the pet damage deposit to her until January 2016, but the Landlord states that he addressed the issue with two breach letters which the Tenant denied being served during the tenancy as well as for this hearing.

I do find it worrying that the only two pages the Tenant claimed she did not have were the very two documents that the Landlord was relying on to support his argument. In this respect, I find that the Landlord failed to deal diligently and expeditiously with this issue. The Act provides remedy to a landlord to deal with such an issue pursuant to Section 47(1) (a) of the Act. However, the Landlord did not pursue this remedy until the Tenant was served with the Notice on February 27, 2016. I find that this time period is so long for an issue that could have been dealt with the Notice much earlier. I also find the Tenant provided written evidence that she had attempted to address the alleged issue of nonpayment of the pet damage deposit with the Landlord shortly before she was served with the Notice which lends credibility to the Tenant's submission that the Landlord failed to bring this matter to her attention many months later after the tenancy started.

Based on the foregoing, I find the Tenant's evidence to be much more compelling than the Landlord's evidence. While the Landlord asserted that the Tenant had no proof that she paid the pet damage deposit, I find the Landlord bears the same burden and has failed to provide sufficient evidence that the Tenant did not pay it. Therefore, based on the foregoing analysis of the evidence before me, I am satisfied the Tenant did pay \$350.00 as a pet damage deposit at the start of the tenancy and the Landlord is obligated to deal with this amount pursuant to the Act at the end of the tenancy.

As the Tenant had to bring this Application against the Landlord to determine this issue, I find that the Tenant is also eligible to recover her filing fee from the Landlord. Therefore, the Tenant may deduct \$100.00 from her next installment of rent pursuant to Section 72(2) (a) of the Act. The Tenant may want to provide the Landlord with a copy of this decision when making the reduced payment.

Conclusion

The parties agreed to end the tenancy on June 30, 2016. The Landlord is granted with an Order of Possession to enforce the ending of the tenancy which may be filed in the BC Supreme Court. However, the Tenant may vacate the rental unit earlier with written notice detailing the end of tenancy date.

The Tenant is to pay rent for May 2016 in the amount of \$950.00 and rent for June 2016 in the amount of \$915.81 as per the Notice of Rent Increase issued by the Landlord on February 29, 2016. The Landlord must deal with the Tenant's security deposit of \$450.00 and the Tenant's pet damage deposit of \$350.00 pursuant to the Act at the end of the tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2016

Residential Tenancy Branch