



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Brother Rental Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Advocate for the Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were personally served to the resident manager. The Agent for the Landlord stated that these documents were received from the resident manager on January 21, 2016. The Agent for the Landlord stated that the Application for Dispute Resolution received by the Landlord declared that the Tenant is seeking a monetary Order for \$750.00.

On August 08, 2016 the Landlord submitted 20 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on August 08, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on July 01, 2012;
- a security deposit of \$312.50 was paid;
- the tenancy ended on November 30, 2015;
- a condition inspection report was completed prior to the start of the tenancy, on June 29, 2012;
- a condition inspection report was completed on the last day of the tenancy, on November 30, 2015;

- a forwarding address for the Tenant was written on the condition inspection report when it was completed on November 30, 2015;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Landlord stated that the security deposit was not returned to the Tenant because he had given the Landlord written authority to retain the deposit.

The Landlord submitted a copy of the condition inspection report, dated November 30, 2015. The Tenant has signed the report at the bottom of the report in the area which indicates that he agrees the Landlord can deduct \$380.00 from his security deposit.

The Tenant stated that:

- he signed the condition inspection report that was completed on November 30, 2015 sometime during the first week of October;
- he did not read the report prior to signing it so he does not know what he was agreeing to;
- when he signed the report he believed he was signing a “release” for the rental unit;
- he did not write the date on the report below his signature; and
- the Agent for the Landlord #2 told him his security deposit would be returned.

The Agent for the Landlord #2 stated that:

- she completed the condition inspection report on November 30, 2015;
- on November 30, 2015 the Tenant signed the report in the area that indicated he authorized the Landlord to recover deductions of \$380.00 by retaining his security deposit;
- this portion of the report was completed prior to the Tenant signing it; and
- she never told the Tenant the security deposit would be returned to him.

Analysis:

On the basis of the condition inspection report submitted in evidence, I find that the Tenant gave the Landlord written authority to retain \$380.00 from his security deposit. As the Tenant acknowledged he signed the report in the section that clearly authorizes the Landlord to retain the deposit, I find that the report is the most reliable evidence.

In determining this matter I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I favoured the testimony of the Agent for the Landlord #2, who stated that the area relating to the security deposit deductions was completed prior to the Tenant signing the report on November 30, 2015, over the testimony of the Tenant, who stated that he signed the report in October of 2015. After considering the evidence in its totality, I find the version of events provided by the Agent for the Landlord #2 is more probable than the version of events provided by the Tenant.

I favoured the testimony of the Agent for the Landlord #2, in part, because of the undisputed evidence that a condition inspection report was completed on November 30, 2015. I find it would be highly unusual for a landlord to have a tenant sign a report before the report was completed.

I favoured the testimony of the Agent for the Landlord #2, in part, because of the Tenant acknowledged that he did not read the report prior to signing it. Given that he did not read the report, I find it entirely possible that he simply did not realize that he was agreeing to deductions from his security deposit when he signed it.

Section 38(4)(a) of the *Residential Tenancy Act (Act)* authorizes landlords to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, a tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. As I have concluded that the Tenant gave the Landlord written authority to retain \$380.00 from this security deposit, which is more than the amount deposited, I find that the Landlord had the right to retain the entire security deposit.

As the Landlord had the right to retain the Tenant's security deposit, I dismiss his application to recover his security deposit.

I find that the Tenant has failed to establish the merits of his Application for Dispute Resolution and I dismiss his application to recover the fee for filing this Application.

Conclusion:

The Application for Dispute Resolution is dismissed in its entirety.

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: September 09, 2016

Residential Tenancy Branch