



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The landlord was present at the start of the hearing.

The landlord applied requesting compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee costs from the tenant. The landlord named a single respondent; tenant S.K.

The tenants applied requesting return of double the security deposit.

The landlord confirmed receipt of the tenants' application. The tenant application includes applicants S.K. and J.G. The landlord said that J.G. vacated during a previous tenancy.

The landlord applied for dispute resolution on August 15, 2016 and the Notice of hearing was issued on August 18, 2016. The landlord served the tenant to an address obtained via a courier service. The landlord had used the courier service to deliver the hearing documents and evidence to an address that had been provided by the tenant at the end of the tenancy in October 2014. The people who now reside at the address given in 2014 provided the male tenants' current address.

On August 17, 2016 the landlord attempted service to the tenant to the address obtained via the courier service. During the hearing the landlord checked the Canada Post web site and determined that the tenant had signed accepting the registered mail on August 19, 2016. Therefore, I find pursuant to section 71 of the Act that the tenant has been sufficiently served with Notice of this hearing.

Issues to be Decided

Is the landlord entitled to compensation in the sum of \$925.00 for the cost of repainting?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord submitted a copy of a tenancy agreement that indicated two tenants (S.K. and D.T.) commenced a tenancy effective July 1, 2014. I will refer to S.K. as "tenant," the only respondent named on the landlords' application.

The landlord is holding a security deposit in the sum of \$960.00. The tenancy agreement was signed by the landlord on July 1, 2014; neither tenant signed the agreement.

A move-in condition inspection report was not completed.

During the tenancy the landlord gave the tenant verbal permission to complete some painting in the rental unit. The tenant was told he had to repaint the walls back to white before the tenancy ended.

The tenancy ended October 31, 2014. The landlord confirmed receipt of a forwarding address given by the tenant on the last day of the tenancy. A move-out inspection report was not scheduled or completed.

The landlord confirmed that the security deposit was not returned to the tenant within 15 days of the end of the tenancy. The landlord did not submit a claim against the deposit until August 2016.

The landlord said that the tenant painted five walls a charcoal black. The landlord had another tenant arriving but was able to quickly locate a painter who had to apply four coats of paint to return the walls to white. A hand-written receipt for the cost of painting, issued on November 1, 2014, was supplied as evidence. The landlord paid \$1,000.00 to have the painting completed and has claimed that sum of compensation.

Analysis

Residential Tenancy Branch policy suggests:

*The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit **is extinguished if:***

- ***the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or***
- ***having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.***

(Emphasis added)

Pursuant to section 24(1) of the Act, I find that the landlord's right to claim against the deposit was extinguished. The landlord must arrange a move-in condition inspection report and when they failed to do so at the start of the tenancy the landlord extinguished the right to claim against the deposit for damages.

Section 38(4) of the Act allows a landlord to retain the deposit if the tenant agrees in writing at the end of the tenancy or an order is issued allowing the landlord to retain the deposit. Neither situation occurred in this instance.

Section 38(1) of the Act requires a landlord to return the deposit within 15 days of the end of the tenancy or the date the forwarding address was given by the tenancy; whichever is later. The landlord did not return the deposit.

Section 38(5) of the Act provides:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(Emphasis added)

As the landlord extinguished his right to claim against the security deposit I find that no later than November 15, 2015 the landlord was required to return the deposit to the tenant. The landlord was at liberty to submit a claim against the tenant, but they were not entitled to claim against the deposit; that right was extinguished at the start of the tenancy when the inspection report was not completed.

Section 38(6) of the Act sets out the consequences when a deposit is not returned as required:

- (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find pursuant to section 38(6) of the Act that the landlord is holding a security deposit in the sum of \$1,920.00.

The landlords' claim for painting costs was unopposed. I find on the balance of probabilities that the tenant failed to follow the agreement made to repaint the walls at the end of the tenancy. Therefore, I find that the landlord is entitled to compensation pursuant to section 67 of the Act, in the sum of \$925.00; the amount claimed on the application and served to the tenant as notice of the claim.

As the claim has merit I find that the landlord is entitled to recover the \$100.00 filing fee cost from the tenant.

I find pursuant to section 72(2)(b) that the landlord may retain \$1,025.00 from the \$1,920.00 security deposit in full satisfaction of the claim.

When a landlord claims against a deposit RTB policy suggests that any residue of a deposit be ordered returned to a tenant. Therefore, I find that the tenant is entitled to return of the balance of the security deposit in the sum of \$895.00.

Based on these determinations I grant the tenant a monetary order in the sum of \$895.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

As the tenant failed to attend the hearing I find that the tenants' application is dismissed.

There is no contradiction in this decision, as the value of the security deposit held by the landlord was doubled in accordance with the Act, based on the landlords' application claiming against the deposit.

Conclusion

The landlord is entitled to compensation in the sum of \$925.00.

The landlord is holding a security deposit in the sum of \$1,920.00.

The landlord is entitled to filing fee costs.

The landlord may deduct the sum owed from the security deposit.

The balance of the security deposit is ordered returned to the tenant.

The tenants' application is dismissed.

This decision is final and binding and 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 02, 2016

Residential Tenancy Branch