



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNSD, FF

Landlord: MNSD, MND

Introduction

Dispute Codes:

Tenant: MNSD

Landlord: MNSD, MNDC, MNR, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties.

The tenant filed on **January 27, 2016** pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit (double) - Section 38
2. An Order to recover the filing fee for this application - Section 72.

The landlord filed on **August 26, 2016** for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for unpaid rent – Section 67
3. An Order to retain the security deposit – Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute. The landlord acknowledged receiving all the evidence of the tenant comprised of 7 pages.

The tenant did not receive the landlord's application as it was sent by registered mail to an address no longer applicable. None the less, the landlord also acknowledged

sending out their application on August 29, 2016: the day which the tenant should have received the landlord's application and all of their evidence for it to be considered as a cross-application to the tenant's claim in accordance with the Rules of Procedure. Effectively, the landlord's application was not served on the tenant, nor would it have been received by the tenant 14 days before the hearing to allow the tenant time to respond, again, in accordance with the Rules of Procedure. As a result, the landlord's application was preliminarily **dismissed**, with leave to reapply.

The hearing proceeded solely on the merits of the tenant's application.

Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant facts of the parties before me are as follows.

The tenancy began April 01, 2015 as a fixed term tenancy for 1 year ending March 31, 2016. Rent was \$2600.00 payable in advance on the 1st. of every month. The landlord collected a security deposit of \$1300.00 and a pet damage deposit of \$700.00 at the outset of the tenancy, which the landlords retain in trust. The tenancy ended earlier than contracted when the tenant determined to vacate earlier than the agreed fixed term at the end of December 2015.

The parties did not agree as to the condition inspections requirements.

The landlord claims the tenant refused to do a move in inspection, while the tenant

claims they did not refuse. The landlord did not dispute that they did not provide additional opportunity to do the inspection and did not make their own inspection or complete a condition inspection report.

The landlord claims the tenant showed up on December 30, 2015 as agreed to do the move out inspection but claimed he was busy and left without doing the inspection. The tenant claims an inspection was conducted by the parties on December 27, 2015 but that the landlord did not complete a condition inspection report and has not provided a copy to the tenant. None the less, the landlord acknowledged they did not provide a second opportunity to conduct an inspection and they did not complete or record their own inspection on a condition inspection report, however claims they took a series of images on December 30, 2016.

The landlord testified that on January 09, 2016 he received the tenant's forwarding address in writing. The parties did not agree as to the administration of the security deposit at the end of the tenancy. The tenant requested its return, and the landlord determined to retain the security deposit. The landlord filed their own application 7 months later.

Analysis

On preponderance of the relevant evidence for this matter, I have reached a Decision.

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I find that the landlord's *right to make a claim against the security deposit* or pet damage deposit was extinguished because they did not comply with **Section 23(3) or 35(2)** (*2 opportunities for inspection*), therefore was obligated to return the deposits after the tenancy ended within the required time to do so. If necessary, it remained available to the landlord to file an application in respect to damages or loss. However, the landlord took no action and retained the deposits.

I find that **Section 38(1)** of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit and pet damage deposit , or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on January 09, 2016 and is therefore liable under **Section 38(6)** which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$1300.00 and a pet damage deposit of \$700.00 and was obligated under Section 38 to return these amounts. The amount which is doubled is the original amount of the deposits. As a result I find the tenant has established an entitlement claim for \$4000.00 and is further entitled to recovery of the 100.00 filing fee for a total entitlement of \$4100.00.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of

\$4100.00. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted in its entirety.

The landlord's application is dismissed, *with leave to reapply*.

This Decision is final and binding on both parties.

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 13, 2016

Residential Tenancy Branch

