



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated June 30, 2016 (the "Application"). The Landlord applied for an order allowing him to keep all or part of the security deposit, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing on his own behalf. The Tenants were represented at the hearing by the Tenant M.K. Both parties in attendance provided a solemn affirmation.

The Landlord testified that his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenants by registered mail on or about July 20, 2016. The Tenant M.K. confirmed receipt of these documents around that time. Both parties were represented at the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of the Landlord's Application package. The Tenant did not submit any documentary evidence.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Is the Landlord entitled to an order allowing him to keep all or part of the security deposit?

Background and Evidence

The parties agreed the tenancy began in or about September 2013 and ended on or about May 31, 2016. Rent in the amount of \$1,750.00 was due each month. The Landlord received a security deposit of \$875.00 from the Tenants, which he holds.

The Landlord provided some oral testimony with respect to the cost he incurred because of the condition of the rental unit at the end of the tenancy. However, during the hearing, both the Landlord and the Tenant M.K. confirmed that a condition inspection report was not completed when the Tenants moved into the rental unit, or when the Tenants moved out of the rental unit.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 38 of the *Act* permits a landlord to make an application for dispute resolution to retain all or part of a security deposit or pet damage deposit. However, section 24(2) of the *Act* confirms:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to a residential property is extinguished if the landlord

- (a) does not comply with section 23(3) [2 opportunities for inspection],*
- (b) having complied with section 23(3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

[Reproduced as written.]

In this case, the parties agreed that a condition inspection report was not completed at the beginning or the end of the tenancy. Accordingly, I find that the right of the Landlord to claim against the security deposit is extinguished. However, the Landlord remains at liberty to apply for a monetary order for damage to the rental unit in accordance with the *Act*.

In light of the above, I order the Landlord to return the security deposit of \$875.00 to the Tenants no later than February 08, 2017, at the address provided by the Tenant M.K. during the hearing.

Conclusion

The Landlord's Application is dismissed.

The Landlord is ordered to return the security deposit of \$875.00 to the Tenants no later than February 08, 2017, at the address provided by M.K. during the hearing.

The Tenants are granted a monetary order in the amount of \$875.00. This order may be filed in and enforced in the Provincial Court of British Columbia (Small Claims) if the security deposit is not paid to the Tenants by February 08, 2017, as ordered.

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: January 17, 2017

Residential Tenancy Branch