



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hunter McLeod Realty Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD; FF

Introduction

This is the Tenant's Application, made September 16, 2016, for return of the security deposit and to recover the cost of the filing fee from the Landlord.

The parties provided affirmed testimony at the Hearing.

The Landlord's agent acknowledged received of the Tenant's Notice of Hearing documents, by registered mail sent September 21, 2016. The Tenant acknowledged receipt of the Landlord's documentary evidence on March 8, 2017.

The Landlord's agent stated that the Respondent named in the Tenant's Application is the property manager and agent for the owner. The Act defines "landlord", in part, as:

"the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;"

Based on the documentary evidence provided by the property manager, I find that the property manager is the owner's agent and exercises powers and performs duties under the Act and tenancy agreement. Therefore, I am satisfied that the property management company named in the Tenant's application meets the definition of "landlord".

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The Landlord is holding a security deposit in the amount of \$390.00 for the Tenant. The tenancy ended on July 31, 2016.

The Tenant testified that the resident manager “Kim” gave the Tenant a “paper” advising that a move-out inspection would be conducted on July 31, 2016, at 1:00 p.m. The Tenant did not provide a copy of the “paper”.

The Tenant stated that after the Tenant finished cleaning the rental unit, he called the Kim four times, but got no answer. He stated that when Kim did not attend for the inspection at 1:00 p.m., the Tenant left the keys in the rental unit and left the building.

The Tenant testified that he left the forwarding address in writing, in the Landlord’s agent’s mail box, on August 18, 2016. He stated that he has not received any of the security deposit back from the Landlord.

The Landlord’s agent stated that the Tenant did not respond to Kim’s e-mail requesting confirmation of a time to complete the condition inspection. He stated that Kim felt intimidated by the Tenant because of the Tenant’s past abusive behaviour towards painters who were doing work for the Landlord at the rental property.

The Landlord’s agent testified that after the Tenant moved out, the agent had email exchanges with the Tenant with respect to conducting a move out inspection. He stated that the Tenant refused to attend a move-out inspection with the Landlord’s agent, so the Landlord’s agent prepared a Condition Inspection Report in the Tenant’s absence on August 9, 2016. The Landlord provided a copy of the Inspection Report in evidence. The Landlord also provided copies of e-mails, text messages and photographs of the rental unit.

The Landlord’s agent alleged that the Tenant caused damage to the rental unit in the amount of \$2,555.79; however, the Landlord has not made an Application for such damages.

Analysis

With respect to completing Condition Inspection Reports at the end of a tenancy, the Act and the Regulations provide, in part:

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord **must** offer the tenant at least 2 opportunities, **as prescribed**, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,**

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written, my emphasis added]

Part 3, Section 17 of the regulation provides:

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant **by providing the tenant with a notice in the approved form.**

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

[Reproduced as written, my emphasis added]

The onus is on the landlord to arrange for the inspection to take place. If the landlord is unsuccessful in scheduling an inspection with the tenant, then the landlord must make an offer to schedule the inspection, in writing. The approved form referred to in the regulation above is entitled "Notice of Final Opportunity to Schedule a Condition Inspection", and can be found in the Residential Tenancy Branch's website: <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Section 38 of the Act provides:

Return of security deposit and pet damage deposit

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

(a) the date the tenancy ends, and

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

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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]*.

- (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.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
- (a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,
 - (b) by giving the deposit personally to the tenant, or
 - (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

The Landlord's agent submitted that the Tenant extinguished his right to claim against the security deposit because he did not attend the Condition Inspection. However, in this case, there is insufficient evidence that the Landlord provided the Tenant with the Notice of Final Opportunity to Schedule a Condition Inspection form.

I find that the Landlord extinguished its right under Section 36(2) of the Act. I further find that the Landlord did not comply with Section 38(1) of the Act and that the Tenant is entitled to compensation pursuant to Section 38(6) in the equivalent of double the security deposit, in the amount of **\$780.00**.

The Tenant's Application has been successful and I find that he is entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

The Landlord remains at liberty to make an application for damages against the Tenant, under Section 67 of the Act.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$880.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: March 17, 2017

Residential Tenancy Branch