



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OPN FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated October 13, 2016 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order allowing the Landlord to keep all or part of the security and pet damage deposits;
- an order of possession based on written notice being given by the Tenant; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf. The Tenant attended the hearing along with the co-tenant, K.F. All parties giving oral testimony provided a solemn affirmation.

During the hearing, the parties confirmed that the tenancy ended when the Tenant vacated the rental unit on or about September 30, 2016. Accordingly, an order of possession is no longer required and this aspect of the Application has not been considered further in this Decision. Therefore, the only portions of the Application to be considered are the Landlord's claim to retain all or part of the security and pet damage deposits, and to recover the filing fee.

The Landlord testified that the initial Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant by registered mail on October 20, 2016. The Tenant acknowledged receipt.

The Landlord also testified that an additional evidence package was served on the Tenant by courier. However, the additional evidence submitted by the Landlord was in support of an updated Monetary Order Worksheet, dated April 3, 2017, which purported to increase the Landlord's monetary claim to \$1,410.69. However, the Landlord did not file an amendment in the correct form, and the Tenant disputed the Landlord's claims. Accordingly, the parties were advised that I would consider only the Landlord's claim as summarized on the Monetary Order Worksheet, dated October 20, 2016. As the additional claims were not before me during the hearing, the Landlord is at liberty to apply for only the *additional* relief listed on the Monetary Order Worksheet, dated April 3, 2017.

The Landlord further advised during the hearing that she submitted digital evidence in the form of a USB stick to the Residential Tenancy Branch and served it upon the Tenant. Although the Tenant acknowledged receipt, a copy of the Landlord's digital evidence was not available to me during the hearing. Further, the Landlord acknowledged it was not submitted or served in accordance with the Rules of Procedure. Despite a concerted effort within the Residential Tenancy Branch, the Landlord's digital evidence was not located. However, for the reasons that follow, I find that the Landlord's digital evidence was not necessary in reaching a Decision, and that the Landlord has suffered no prejudice as a result.

The Tenant submitted documentary and digital evidence in response to the Landlord's Application. The Tenant testified the package was served on the Landlord by registered mail. The Landlord acknowledged receipt.

No other issues were raised with respect to service or receipt of the above documents. 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 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

1. Is the Landlord entitled to a monetary order allowing the Landlord to keep all or part of the security and pet damage deposits?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on August 15, 2012, and ended on September 30, 2016. Rent in the amount of \$1,148.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$560.00 and a pet damage deposit of \$560.00, which the Landlord holds pending the outcome of this Application. The parties confirmed that condition inspections and reports were not completed at the beginning or the end of the tenancy.

The Landlord sought to retain the security and pet damage deposits on account of a number of expenses incurred for damage she stated was caused by the Tenant. A Monetary Order Worksheet, dated October 20, 2016, outlines carpet cleaning, general cleaning, repair of a broken dishwasher, and light bulbs and ice cube trays, as expenses being claimed. All of the Landlord's claims were disputed by the Tenant.

Analysis

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

Section 38(5) of the *Act* states:

The right of a landlord to retain all or part of a security deposit or pet damage deposit...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) or 36(2).

[Reproduced as written.]

Sections 24(2) of the *Act* extinguishes the right of a landlord to claim against the security and pet damage deposits if, at the beginning of the tenancy, the landlord does not provide two opportunities for inspection, does not participate after opportunities have been provided, or does not complete a condition inspection report and give the tenant a copy of it. Section 36(2) of the *Act* places the same obligation on the landlord at the end of the tenancy.

After careful review of the evidence before me, I find the Landlord's Application discloses a claim for damage but that the Landlord has extinguished her right to claim against the security and pet damage deposits. Both parties confirmed that a condition inspection was not completed at the beginning and the end of the tenancy, as required by sections 23 and 35 of the *Act*, respectively.

The Landlord's Application is dismissed. Policy Guideline #17(C) requires that I order the Landlord to return the security and pet damage deposits to the Tenant, even though the Tenant has not applied for dispute resolution for its return. I order the Landlord to return the security and pet damage deposits of \$1,120.00 to the Tenant in accordance with section 38 of the *Act*.

Conclusion

The Landlord's Application is dismissed. However, the Landlord remains at liberty to apply for the *additional* relief listed on the Monetary Order Worksheet, dated April 3, 2017.

The Tenant is granted a monetary order in the amount of \$1,120.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 25, 2017

Residential Tenancy Branch