



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that the Landlord's Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, although she cannot recall the date of service. The Agent for the Tenant acknowledged receipt of these documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Tenant stated that the Tenant's Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, on August 26, 2017. The Landlord acknowledged receipt of these documents.

On September 05, 2017 the Landlord submitted 15 pages of evidence and 12 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenant on September 06, 2017 or September 07, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On August 25, 2017 the Tenant submitted 29 pages of evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was mailed to the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The Agent for the Tenant stated that a video was submitted in evidence and served to the Landlord. After considerable discussion it was determined that the video evidence submitted to both parties is actually a screen shot of a video screen, which cannot be viewed. As the video evidence cannot be viewed, it cannot be considered as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

The Landlord was advised that her application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because her Application for Dispute Resolution did not provide sufficient particulars of her claim for compensation for damages, as is required by section 59(2)(b) of the *Act*.

In reaching this conclusion, I was strongly influenced by the absence of a Monetary Order Worksheet or a clearly identifiable list of alleged damages that indicate the amount of compensation the Landlord is claiming for each item that was allegedly damaged. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims.

The Landlord retains the right to file another Application for Dispute Resolution in which she claims compensation for damages to the rental unit.

Issue(s) to be Decided

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Agent for the Tenant agree:

- the tenancy began on July 05, 2016;
- the tenancy ended on April 20, 2017;
- the Tenant paid a security deposit/pet damage deposit of \$2,950.00;
- an initial condition inspection report was completed in July of 2016;
- a final condition inspection report was completed in April of 2017, although it was not signed by the Tenant as she did not agree with some of the information in the report; and
- the Tenant provided the Landlord with a forwarding address, via email, on April 19, 2017 or April 20, 2017.

At the hearing both parties stated that the Tenant did not give the Landlord written authority to retain any portion of the pet damage/security deposit. The Tenant submitted a copy of an email from the Tenant to the Landlord, dated April 25, 2017, in which the Tenant authorized the Landlord to “deduct \$280 from my deposit for a professional cleaning”.

Analysis

On the basis of the email from the Tenant to the Landlord, dated April 25, 2017, I find that the Tenant authorized the Landlord to retain \$280.00 from her security deposit for cleaning. I find that this email is more compelling than the testimony of the Landlord and the Agent for the Tenant, both of whom stated that written authorization to retain a portion of the deposit was not provided. I therefore find that, as of April 25, 2017, the Landlord had the right to retain \$280.00 from the Tenant’s security/pet damage deposit, pursuant to section 38(4)(a) of the *Act*.

As the Landlord has failed to establish a right to retain any amount other than the \$280.00, I find that the Landlord must return the remaining \$2,670.00 to the Tenant.

I find that the Landlord has failed to establish the merit of her Application for Dispute Resolution and I therefore dismiss her application to recover the fee for filing an Application for Dispute Resolution. I note that the Landlord had the right to retain \$280.00 from the Tenant’s security/damage deposit on the basis of the email sent on April 25, 2017 and that she did not need a hearing to retain that amount.

I find that the Tenant did not need to file an Application for Dispute Resolution and I therefore dismiss her application to recover the fee for filing an Application for Dispute Resolution. The portion of the security deposit being returned to the Tenant would have

been returned to her on the basis of the Landlord's Application for Dispute Resolution, given that the Landlord failed to establish a right to retain all of the deposits.

Conclusion

The Tenant has established a monetary claim, in the amount of \$2,670.00, which represents a partial return of her security/pet damage deposit. Based on these determinations I grant the Tenant a monetary Order for the \$2,670.00. In the event the Landlord does not voluntarily 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 20, 2017

Residential Tenancy Branch