



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

Both parties attended and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenant by registered mail and the tenant confirmed receipt. The landlord said he got no evidence from the tenant. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages;
- b) To retain the security deposit pursuant to sections 35 and 36 of the Act; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant's right to the return of the security deposit been extinguished pursuant to sections 35 and 36?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. Both parties agreed that the tenancy commenced in March 2015, that monthly rent was \$2000 and a security deposit of \$1000 was paid in February 2015. The tenant vacated in August 2017 **and the landlord provided evidence that the tenant provided a forwarding address by text** in September 2017. The landlord filed his application to claim damages on September 13, 2017.

The landlord provided opportunities for final inspection on September 1, 2017 and September 10, 2017 and on September 9, 2017 attached a Notice of Final Opportunity to Schedule a Condition Inspection. The landlord stated the tenant had agreed to both dates and then changed his mind on short notice. The landlord spent time on each day waiting for the tenant. The landlord had already put up the house for sale and needed to

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON APRIL 20, 2018
AT THE PLACES INDICATED IN **UNDERLINED BOLD**.

have some cleaning and repair done. He paid \$568.61 for cleaning and repairs (invoice in evidence).

The tenant said he did not believe it was necessary to do the walk through as the landlord had already done it. He said he had inspected the house himself with witnesses and took pictures. He said when he asked the Residential Tenancy Branch whether it was necessary for him to attend the move-out inspection, he was told it was not as long as he had pictures and witnesses.

The landlord provided much documentary evidence. I note he said he received none from the tenant and I find the tenant did not file any. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

I find section 36 of the Act states:

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.

Policy Guideline 17 also clarifies how this situation is handled:

4. In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 [consequences for tenant and landlord if report requirements not met] of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

I find the weight of the evidence provided by the landlord supports his claim for \$586.61 for cleaning and repairs. His photographs and condition inspection report support his statements that the home was left unclean, missing light bulbs and in need of some repair. As the security deposit of \$1000 exceeds the damage claim, I find the landlord is entitled to retain the balance of the security deposit as the tenant has forfeited the right to its return by not participating in the scheduled move-out inspections.

Although the tenant contended he telephoned and received advice that he did not need to attend, I find this is contrary to the law in section 36 of the Act. I find the tenant contravened section 36 of the Act and so extinguished his right to the return of the deposit. I find documentary evidence supports that the landlord scheduled the move-out inspection for September 1, 2017 by email on August 24, 2017, the tenant said he could not be there and the landlord advised he could have a representative do it for him. An email from the tenant said the RTB had advised the landlord should give him more options for days. The landlord sent a letter dated August 29, 2017 and gave the tenant the option of a representative attending on

September 1 or another opportunity on Sunday September 10, 2017 at noon. The tenant agreed by text to September 10: "Perfect, that day will work. Thanks". The landlord also did the inspection with a witness on September 1, 2017 and prepared a list of problems for the tenant to correct if he wished to. He sent the list on September 5, 2017. On September 6, 2017, the landlord asked the tenant to confirm he would be available on September 10. On September 7, 2017, the tenant replied that he planned a trip for the family out of town so was not attending since the landlord had done an inspection on September 1, 2017; he went on to dispute problems alleged by the landlord. The landlord replied by stating he was serving him a Final Opportunity for a condition inspection report at 12 noon on September 10, 2017 and I find he did so.

The tenant asked about rights of appeal and I told him that a Review may be requested as soon as the decision is received through the Residential Tenancy Branch and judicial review through the Supreme Court of BC.

Conclusion:

I find the landlord is entitled to retain the security deposit of \$1000 as the tenant's right to the return of it has been extinguished. I find this will compensate the landlord for his damages and \$100 filing fee with the tenant forfeiting any balance pursuant to section 36 of the Act and Policy Guideline 17.

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*.

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