



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and to recover the filing fee for this application.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on November 23, 2017. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties present.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on December 15, 2006 as a month to month tenancy. The tenancy ended December 25, 2015. Rent was \$717.00 per month payable in advance of the 15th day of each month. The Tenant paid a security deposit of \$350.00 at the start of the tenancy.

The Tenant said that she moved out of the rental unit on December 25, 2015 and gave the Landlord a forwarding address in writing on February 28, 2016. The Tenant said she was no condition inspection reports were completed for this tenancy. The Landlord agreed that they did not know a condition inspection report was required. The Tenant continued to say she requested the return of her security deposit and the Landlords did not return it.

The Landlord said they did not make an application to retain the security deposit but they thought that because they believed the Tenant had unpaid rent they could keep the Tenant's security deposit as partial payment of the unpaid rent.

The Tenant said she paid all the rent and submitted bank statement to support her statement that the rent was paid.

The Landlord said in closing he thought that when there was unpaid rent the landlord could keep the tenants security deposit.

The Tenant said in closing there is no unpaid rent and the Landlord had no reason to retain her security deposit. The Tenant requested the return of the security deposit of \$350.00.

Analysis

Sections 23 and 24 explain the requirements and consequences for landlords and tenants with respect to move in condition inspection reports. They are as follows:

Condition inspection: start of tenancy or new pet

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) 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.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (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 has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a 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 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.

Further section 38 (1) says that 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.

And Section 38 (6) says 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.

I accept the Tenant's testimony that she gave the Landlords a forwarding address in writing on February 28, 2016. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by March 15, 2016. Consequently I find for the Tenant and grant an order for double the security deposit of \$350.00 in the amount of $\$350.00 \times 2 = \700.00 .

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord. Pursuant to section 38, 67 and 72 a monetary order for \$800.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$700.00 and the filing fee of \$100.00. .

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 & 72 of the Act, I grant a Monetary Order for \$800.00 to the Tenant. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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: April 16, 2018

Residential Tenancy Branch