



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT/MNSD/FFT

Introduction

On April 30, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting a Monetary Order for Compensation for the loss of personal items, time and aggravation, a Monetary Order for the return of her Security Deposit and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the Notice of Hearing and the documentary evidence that I have before me.

I have reviewed all oral and written 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

Should the Tenant receive a Monetary Order for the loss of personal items and compensation for the time and aggravation to prepare for Dispute Resolution?
Should the Tenant receive a Monetary Order for the return of her Security Deposit?
Should the Tenant receive reimbursement for the Application Filing Fee?

Background and Evidence

The Tenant and the Landlord agreed to the following terms of the Tenancy Agreement:

The Tenant and the Landlord entered into a tenancy on January 15, 2017 for a six-month fixed-term. Each time a term ended, the Tenant and the Landlord entered into another fixed term with the most recent tenancy agreement starting on October 1, 2017, to end six months later, on March 31, 2018. The monthly rent of \$900.00 was due on the first of each month and the Landlord collected and still holds a security deposit of \$450.00.

Tenant Evidence:

The Tenant provided affirmed testimony that, on March 12, 2018, she gave short notice to the Landlord and informed him via text that she was moving out of the rental unit on March 31, 2018.

On March 13, 2018, she received a text from the Landlord who indicated his surprise at the short notice. The Landlord asked if she was forfeiting her “damage deposit” and she responded, “Seems that way”. The Tenant testified that her text was meant to acknowledge that the Landlord was keeping her security deposit because she did not provide one month notice to end the tenancy. The Tenant testified that she did not agree or provide consent for the Landlord to keep her security deposit.

Between March 12 and March 31, the Tenant agreed to many showings of the rental unit. During a March 26, 2018 exchange of texts, the Landlord initially indicated to the Tenant that he found a new tenant for April 1, 2018. The Tenant asked if that meant that she would be able to get her deposit back. The Landlord replied:

“You were a good tenant during our tenure however 2 weeks notice is not cool at all. So the answer is no.”

Later that morning, the Landlord texted the Tenant and said the following about when the new tenants were moving in:

“I see why you were asking about deposit back, my mistake I meant May 1st not April.”

The Tenant stated that she moved out of the rental unit on March 30, 2018 and returned on March 31, 2018 to clean the unit.

The Tenant testified and provided evidence that, on April 3, 2018, she posted a letter to the Landlord’s entryway that requested the return of her security deposit and provided her forwarding address. The Tenant stated that she

had not received her security deposit by April 30, 2018 and as a result, applied for Dispute Resolution.

In relation to her claim for compensation for lost items, the Tenant stated that she had originally claimed for the loss of several items that went missing during her move; however, has found some of those items. The Tenant said that she has no evidence that the Landlord is responsible for the other missing items.

The Tenant testified that she claimed \$450.00 for loss of time and aggravation due to the Landlord's actions and having to prepare for this hearing.

Landlord evidence:

The Landlord agreed that he received the Tenant's late notice to vacate the rental unit for March 31, 2018.

The Landlord testified that he did not complete any move-in or move-out inspections with the Tenant and has no paperwork regarding inspections. He stated he planned to do a move-out inspection with the Tenant; however, she was stalling and seemed to be waiting until the last minute to return the keys.

The Landlord stated that, after he received notice from the Tenant, he immediately started looking for new tenants for the rental unit. The Landlord testified that he found new Tenants and they moved in on April 1, 2018.

The Landlord testified that, other than providing short notice, he did not have any issues with the Tenant during her tenancy and was surprised that she didn't clean her suite when she left. The Landlord stated that because the Tenant didn't provide proper notice, he kept her security deposit.

The Landlord submitted pictures he took of the rental unit from April 1, 2018, claiming that the Tenant didn't clean it properly, therefore, further justifying that he should be able to keep the security deposit.

The Landlord acknowledged that he did not return the Tenant's security deposit to her, nor did he apply for Dispute Resolution within fifteen days of receiving her forwarding address.

The Landlord testified that the Tenant refused to set up a move-out inspection; however, stated he has no evidence, such as texts or paperwork, to support this claim.

Analysis

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days, and does not have the Tenant's agreement to keep the deposit, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's testimony and evidence that they requested their \$450.00 security deposit and notified the Landlord of their forwarding address on April 6, 2018 in accordance with Sections 88 and 90 of the Act.

The Landlord testified that he kept the security deposit, has no written agreement with the Tenant to keep the security deposit, nor has he made an Application for Dispute Resolution claiming against the deposit. For these reasons, I find the Landlord must reimburse the Tenant double the amount of the outstanding security deposit for a total of \$900.00, pursuant to Section 38(6) of the Act.

As the Tenant's claim has merit, I find that the Tenant should be reimbursed for the \$100.00 Filing Fee, pursuant to Section 72 of the Act.

The Tenant has located some of the items that she initially claimed as missing and has failed to provide sufficient evidence that the Landlord is responsible for any of the items that went missing during her move. For these reasons, I dismiss the Tenant's claim to receive a Monetary Order for the loss of personal items without leave to reapply.

As part of her Application, the Tenant claimed for compensation for her time and aggravation. The Act provides specific guidance regarding compensation for damage or loss and I have awarded the Tenant double her security deposit in accordance with Section 38 of the Act and compensation for the Filing Fee in accordance with Section 72 of the Act. I find that the Tenant failed to provide sufficient evidence to support her

claim of a loss that hasn't already been addressed by the above awards. As a result, I dismiss without leave to reapply, the Tenant's claim to receive a Monetary Order for her time and aggravation as a result of applying and participating in this Dispute Resolution Hearing.

Conclusion

I find that the Tenant's Application to receive a Monetary Order for the loss of personal items and compensation for the time and aggravation to prepare for Dispute Resolution is dismissed without leave to reapply.

The Tenant has established a monetary claim, in the amount of \$1,000.00, which includes \$900.00 for double the amount of the outstanding security deposit and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a Monetary Order for \$1,000.00. In the event that the Landlord does not 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 *Residential Tenancy Act*.

Dated: June 11, 2018

Residential Tenancy Branch