



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAN XU
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Preliminary matter

At the start of the conference call the Landlord questioned if the Tenant's Advocate could be both an advocate and witness at the hearing. The Advocate said he would be a witness if he had to choose one. The Tenant Advocate said they would need a translator in order to continue the hearing as the Tenant's first language is not English. The Arbitrator asked the Advocate what his witness testimony would be in regard to. The Advocate said he witnessed the move out inspection. The Arbitrator asked the Landlord if there were condition inspection reports completed for this tenancy. The Landlord said no actual condition inspection reports were completed for the tenancy. The Arbitrator allowed the Advocate to continue as an Advocate as his witness testimony about the condition inspection reports was no longer necessary. The Advocate continued as an advocate and translator.

Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on October 27, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

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

Background and Evidence

The Tenant moved into the rental unit prior to April 9, 2018, but a tenancy agreement was completed on April 9, 2018 for a fixed term tenancy with an expiry date of July 1, 2018. Rent was originally \$2,400.00 per month payable on the 1st day of each month. The rent on the tenancy agreement was adjusted to \$2,200.00 per month. The Tenant paid a security deposit of \$1,200.00 on April 9, 2018. The Landlord said no condition inspection reports were completed for this tenancy. The tenancy ended on June 25, 2018.

The Tenant Advocate said that the Tenant cleaned the rental unit prior to moving out and then emailed the Landlord for her security deposit to be e-transferred to her. The Tenant's Advocate said the Landlord did not return the security deposit; therefore the Tenant has made this application. The application is for the return of the security deposit of \$1,200.00 and to recover the filing fee of \$100.00.

The Landlord said that the contract/tenancy agreement is not valid as the Tenant had lived in the rental unit for many months prior to the tenancy agreement being completed. The Landlord continued to say that the original tenant of the unit completed the tenancy agreement with the Tenant. The Landlord said she collected the security deposit from the Tenant and she is holding it at present. The Landlord continued to say there is damage to the rental unit and unpaid rent so she retained the Tenant's security deposit. The Landlord said she thought about making an application to the Residential Tenancy Branch to retain the security deposit, for damages and for unpaid rent but the application was not made. The Landlord said she did not receive the Tenant's forwarding address in writing so the Landlord thought she was correct to keep the security deposit.

Analysis

I have reviewed the evidence submitted by both parties and the testimony given at the hearing. It is my finding that as the Landlord agreed to the tenancy with the Tenant as of April 9, 2018 and the Landlord collected the security deposit of \$1,200.00 from the Tenant; therefore a tenancy exists between the Landlord and the Tenant. Consequently the Landlord and Tenant are obligated to comply with the Residential Tenancy Act.

Section 23 of the Act says:

- (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.

Section 24 of the Act says:

Consequences for tenant and landlord if report requirements not met

(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 of the Act says:

(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 find that as condition inspection reports were not completed at the start and end of the tenancy the Landlord's right to claim against the security deposit is extinguished. Further as the Tenant did not give the Landlord her forwarding address in writing until the Landlord received the Tenant's hearing package. I find the Tenant's written forwarding address has been received by the Landlord as of today the hearing date. I order the Landlord to return the Tenant's security deposit of \$1,200.00 with 15 days of receiving this decision and order.

As the Tenant was successful in this matter I further order the Tenant to recover the cost of the filing fee of \$100.00 from the Landlord. Pursuant to section 38 and 67 a monetary order for \$1,300.00 will be issued to the Tenant. This Monetary order represents the return of the security deposit of \$1,200.00 and the recovery of the filing fee of \$100.00.

Return of the security deposit	\$1,200.00
Recover filing fee	\$ 100.00
Balance owing to the Tenant	\$1,300.00

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$1,300.00 to the Tenant. The order must be served on the Respondent 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: February 19, 2019

Residential Tenancy Branch