



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* ("Act") for the return of all or part of her security and pet damage deposits (the "Deposits"), and to recover the cost of her filing fee. The Tenant argued that she should receive double the amount of the Deposits in this set of circumstances.

The Tenant, the Tenant's sub-letter, L.B., (the "Sub-Letter"), and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I 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.

Preliminary and Procedural Matters

The Tenant explained that there are two applications before me, because she sent her first application to the Landlord by regular mail, but was told that registered mail is better, so she started the process again. The Parties agreed that the first application was replaced by the second Application that is before me. There is evidence in the first application that I consider later in this decision, so I find that both applications are before me.

The Landlord said that the Tenant served him with her Application for Dispute

Resolution, but no other documentary evidence. The Tenant did not dispute that she only sent the Application to the Landlord, so I have not considered the Tenant's documentary evidence in the matters before me.

The Landlord submitted five pages of documentary evidence to the Tenant's first application, uploading the documents to the Residential Tenancy Branch portal. The Tenant said she received these documents from the Landlord and had time to review them.

Issues to be Decided

- Is the Tenant entitled to the return of the security and pet damage deposits pursuant to section 38 of the *Act*, and if so, in what amounts?
- Is the Tenant entitled to the recovery of the cost of the filing fee under section 72 of the *Act*?

Background and Evidence

The Parties agreed that the tenancy agreement sets out that the month to month tenancy began on June 15, 2017, with a monthly rent of \$725.00 due on the first day of each month. The Tenant said that she paid the Landlord a security deposit of \$362.50 and a pet damage deposit of \$362.50; however, the Landlord said the Tenant did not pay him a pet damage deposit, although he said in the hearing that he agreed to allow her to have a pet cat in the rental unit.

The Landlord said that he did not prepare a condition inspection report ("CIR"), at the beginning of the tenancy, but that he "wrote stuff on his copy of the tenancy agreement" and that the Tenant signed this sheet of paper. He said he did not complete a CIR at the end of the tenancy, because the Tenant never returned to the rental unit after having sub-let it while she travelled.

In the copy of the tenancy agreement that the Landlord submitted into evidence, there is a handwritten document immediately after the tenancy agreement that states:

British Columbia CAN
[Tenant's name and date of birth]
[indecipherable writing]
Vancouver V5X 2B9

Condition of premises, Final inspection:

Apartment is very clean

-1 closet door still needs to be repaired

-carpet [indecipherable writing] to clean

-blind brackets missing in 3 windows

[Tenant's signature]

The Parties agreed that the Tenant occupied the rental unit from June 15, 2017, until March 30, 2018, at which time she went travelling. The Parties agreed that the Tenant arranged for her friend, LB, to sublet the rental unit, with the approval of the Landlord.

The Tenant said in the hearing that she returned from her travels in mid-July 2018. She said she provided the Landlord with a letter on July 27, 2018, giving him one month's notice of her intention to end the tenancy at the end of August 2018. The Tenant said she also requested in this letter that the Landlord repay her the \$725.00 of deposits she had paid him -- \$362.50 for a security deposit and \$362.50 for a pet damage deposit. The Tenant said she also gave the Landlord her forwarding address in this letter, so that the Landlord would know where to return the \$725.00.

The Tenant said that the Landlord had not given her an address for service of documents, other than the address of the rental unit. The Tenant said that she put the letter dated July 27, 2018, in the rental unit mail box.

The Tenant said she decided not to move back into the rental unit, because the Sub-Letter told her that the Landlord had entered the rental unit without notice, had yelled at him, and "was throwing stuff out the window". In the hearing, the Sub-Letter confirmed this and said that the Landlord had told him that the rent cheque was late; the Sub-Letter said he told the Landlord to attend the rental unit, at which time the Sub-Letter would give the Landlord cash for the rent owing.

The Landlord said that the Sub-Letter did not answer his telephone or the door, so the Landlord entered the rental unit to see if he had moved out. The Landlord said "I opened the door and nothing else." The Landlord did not agree with the Sub-Letter that there had been any yelling or throwing of things.

The Landlord also said he believed that the Sub-Letter was responsible for a broken kitchen window in the rental unit. The Landlord said that the damage is in excess of \$1,000.00 and that it is difficult to fix, because they do not make that kind of window anymore. The Landlord said he does not have a copy of the receipts to fix the damage,

but he said he “has 40 years’ experience” as a landlord and that he knows what things cost. The Landlord said he kept the Tenant’s security deposit to cover part of the cost of the damage to the rental unit.

The Landlord said that the Sub-Letter moved out at the end of July 2018, and that the Tenant never returned and failed to give written notice of her intent to move out of the rental unit. The Landlord said that he lost half a month’s rent in August and that a window in the kitchen was left broken.

Analysis

The Landlord said he retained the Tenant’s Deposit(s), because he said there was over \$1,000.00 worth of damage to the rental unit, caused by the Sub-Letter; however, as I informed the Landlord in the hearing, he did not apply to the Residential Tenancy Branch for a monetary order for damages to be applied to the security deposit, so this claim is not an issue before me.

There are matters before me about which the Parties disagree:

1. Did the Tenant give the Landlord a pet deposit? and
2. Did the Tenant give the Landlord a forwarding address?

Pet Deposit

The Parties agreed that the Tenant had a pet cat in the rental unit with the approval of the Landlord. The tenancy agreement states in paragraph 7(e) that “the Tenant(s) understand no pets of any kind are allowed at any time . . . without prior permission from the Landlord.” The word “cat” is written in the right margin of the tenancy agreement beside this paragraph.

The tenancy agreement also states that the security deposit paid by the Tenant was \$365.00; however, the Parties agreed in the hearing that it was half the rent, which was \$362.50. This is consistent with section 2(1)(a) of the Schedule to the Regulation of the Act, which states: “the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property.” Half of the rent is \$362.50. This leads me to find that the tenancy agreement has errors in it, so its lack of reference to the pet deposit is not determinative.

Further, the documentary evidence before me includes a handwritten note saying:

“I received \$795.00 rent for June & pet deposit. June 12, 2017 FRIEDMANN”. This is consistent with the Parties’ evidence that the Tenant moved into the rental unit on June 15, 2017. While \$795.00 is more than a month’s rent, as set out in the tenancy agreement and stated by the Parties in the hearing, this note supports the Tenant’s evidence that she paid the Landlord a pet deposit.

When I consider all the evidence before me overall, I find on a balance of probabilities that the Tenant paid the Landlord a security deposit of \$362.50 and a pet deposit of \$362.50.

Forwarding Address

The undisputed evidence before me is that the Landlord used the rental unit address as his address for service. This is consistent with the Landlord having told me to send this decision letter to the rental unit address.

The evidence of the Parties is that the Landlord attended the rental unit while the Tenant was away, because the Sub-Letter owed him rent. The Parties agreed that the Landlord entered the rental unit without having given the Sub-Letter any notice that he was coming, and that the Landlord entered the unit by using his own key. I find there is insufficient evidence before me to determine what occurred after the Landlord entered the rental unit, but I am satisfied that it is more likely than not that the Landlord and the Sub-Letter had a disagreement. I find it more likely than not that the nature of this interaction contributed to the Tenant’s decision to end the tenancy at the end of the sub-lease; I find that she gave the Landlord one month’s written notice of her intention to end the tenancy. I find that the Tenant placed this written notice in the rental unit mail box on July 27, 2018, and that this notice included the Tenant’s forwarding address. According to section 90(d) of the Act, this letter was deemed served on the Landlord three days later on July 30, 2018.

I have found that on July 30, 2018, the Landlord received the Tenant’s one month notice to end the tenancy and her forwarding address, and that the Parties agreed that the tenancy ended on August 31, 2018. Section 38(1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the landlord receives a tenant’s forwarding address in writing, the landlord must either:

- (a) repay any deposits to the Tenant, or
- (b) apply for dispute resolution claiming against the deposits.

The consequences for not complying with section 38(1) are set out in section 38(6) of the *Act*: a landlord may not make a claim against the security deposit or any pet damage deposit, and the landlord must pay the tenant double the amount of the deposits owing.

According to the evidence before me that I have accepted, the Landlord did not return the Deposits to the Tenant and did not apply for dispute resolution to make a claim against the Deposits. As a result, the Landlord faces the consequences set out in section 38(6) of the *Act* for failing to comply with his obligations under section 38(1).

The Landlord failed to comply with the requirements of section 38(1), so I grant the Tenant an order pursuant to section 38(6)(b); I find the Landlord must pay the Tenant double the amount of the Deposits for a total of \$1,450.00. There is no interest payable on the Deposits.

I also grant the filing fee to the Tenant, pursuant to section 72 of the *Act*, as she was successful in her Application.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,550.00. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 20, 2019

Residential Tenancy Branch