



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant seeking compensation for money owed by the landlord; specifically for double the security deposit, and to recover the filing fee.

Both parties participated in the hearing. The parties were given opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues with respect to the service of the Notice of Dispute Resolution Proceeding or documentary evidence were raised by either party. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed relevant evidence in this matter is as follows. The tenancy ended September 30, 2018 by written mutual agreement. At the outset of the tenancy the landlord collected security and pet damage deposits in the sum of \$1575.00. The parties agreed that neither move in or move out condition inspections were conducted. Soon after the tenancy ended the landlord filed for compensation for damage and monies owing the landlord other than damage, on October 25, 2018. The parties agreed that subsequently in mid November 2018 the landlord received the tenant's forwarding address in writing. The landlord's application was scheduled for February 19, 2019. As the tenant did not file a cross application within the prescribed time until January 31, 2019, solely the landlord's application was heard on February 19, 2019 and the tenant's application scheduled for this date. In their application the tenant sought/seeks double the amount of their deposits on the basis the landlord's right to file

for dispute resolution for damage to the unit was extinguished pursuant to Section 24(2) of the Act.

On the landlord's application heard February 19, 2019 a final and binding Decision was rendered within which the landlord was granted compensation for monies owing the landlord other than damage to the unit. As the landlord still held deposits the deposits were used to satisfy the landlord's award, with their balance returned to the tenant.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

Residential Tenancy Policy Guideline 17 - Security Deposit and Set Off, in parts relevant to this matter states,

B. SECURITY DEPOSIT

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if
 - the landlord does not offer the tenant at least two opportunities for inspection as required¹⁰ (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or
 - having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
 - to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
 - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
 - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
 - to file a monetary claim for damages arising out of the tenancy, including Damage to the rental unit.

In this matter I find that the landlord filed for dispute resolution on October 25, 2018, in part for monies owing for *other than damage* to the rental unit, and was awarded same.

Section 72 of the Act states,

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I find that pursuant to Section 72(2)(b) of the Act the landlord's award was deducted from deposits due to the tenant.

As a result of all the above I find that any security deposit or pet damage deposit due to the tenant was previously satisfied and returned to them in accordance with the Act. I find the tenant's application is *res judicata*, or in more simple language, the issue or application has already been decided in the appropriate forum. Therefore, I **dismiss** the tenant's application, without leave to reapply.

Conclusion

The tenant's application is dismissed, without leave to reapply.

This Decision is final and binding.

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 09, 2019

Residential Tenancy Branch