



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlords with her application for dispute resolution on December 22, 2018 via registered mail. The original application sought to recover the tenant's \$525.00 security deposit and \$100.00 filing fee from the landlords. The landlords testified that they received the tenant's application on or around January 11, 2019. I find that the tenant's application for dispute resolution was served on the landlords in accordance with section 89 of the *Act*.

The tenant testified that she served the landlords with an amendment to her original application which sought to recover double her security deposit, pursuant to section 38 of the *Act* and the \$100.00 filing fee, via registered mail. The landlords testified that they did not receive the tenant's amendment package. I find that service of the amendment was not effected on the landlords, the tenant's amendment is therefore dismissed.

I note that pursuant to Residential Tenancy Branch Policy Guideline 17, I must consider if the tenant is entitled to double her deposit, even if she does not apply for double her

deposit in the application for dispute resolution. Therefore, the dismissal of the tenant's amendment does not impact the tenant's claim for double her security deposit.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 3, 2018 and ended on December 1, 2018. Monthly rent in the amount of \$1,050.00 was payable on the first day of each month. This was originally a fixed term tenancy set to end on May 15, 2019. A security deposit of \$525.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that she provided the landlords with her forwarding address in writing via registered mail on January 1, 2019. The landlords confirmed receipt of the tenant's forwarding address but could not recall on what date.

Both parties agree on the following facts. The tenant e-mailed the landlord on July 31, 2018 and stated:

As per the British Columbia Residential Tenancy Agreement, the landlord and tenant are required to conduct a condition inspection of the unit. As I am unable to be there to see the unit in person, and may not arrive before you leave, if you would kindly state in writing that everything in the unit (plumbing, appliances etc.) are in good working order and that the unit will be left clean....my plan is to make it there for the 3rd but so far that's all I know.

In subsequent e-mails the tenant stated that she did not require a written letter regarding the condition of the subject rental property and that an e-mail would suffice. The landlords provided the requested email confirmation regarding the condition of the subject rental property on August 7, 2018. The e-mails from July 31 to Aug 7, 2018 were entered into evidence. A written condition inspection report was not completed by the landlords.

Both parties agree on the following facts. On November 2, 2018 the tenant e-mailed the landlords and notified them that she would be vacating the subject rental property on November 15, 2018. Through a series of e-mails the tenant agreed to pay November 2018's rent and move out of the subject rental property on December 1, 2018. The aforementioned e-mails were entered into evidence.

Both parties agreed on the following facts. On December 11, 2018 the landlords e-mailed the tenant and requested that she attend at the subject rental property to complete a move out condition inspection report on December 15, 2018. The tenant responded via e-mail on December 11, 2018 stating that she would not attend at the subject rental property to complete a move out inspection report because a move in condition inspection report was not completed and the move out condition inspection should have occurred a day or two after she moved out. The aforementioned e-mails were entered into evidence.

Both parties agreed on the following facts. On December 12, 2018 the landlords e-mailed the tenant and requested that she attend at the subject property on December 14, 2018 to complete the move out condition inspection report. Attached to this email was Residential Tenancy Branch form #22: Notice of Final Opportunity to Schedule a Condition Inspection ("R.T.B. form #22"). The tenant responded to this email on December 12, 2018 and reiterated that she would not attend to complete the move out condition inspection report. The tenant testified that she received R.T.B. form #22.

Both parties agreed to the following facts. The tenant did not authorize the landlord to make any deductions from her security deposit. The landlords continue to retain the tenant's security deposit. The landlords did not file an application to retain the tenant's security deposit.

The landlords testified that no-one lived at the subject rental property in December 2018.

The tenant testified that she is seeking double her deposit from the landlords. The tenant testified that her claim for monetary damage and compensation is for the \$100.00 filing fee.

Analysis

Section 24 of the *Act* sets out the rules for when joint move in inspections and inspection reports are to be completed by the parties.

Section 24(2) of the *Act* states:

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.

I find that at the beginning of the tenancy, at the behest of the tenant, the parties agreed that the landlord was to complete a condition inspection of the subject rental property without the tenant and that an e-mailed statement as to the condition of the subject rental property was all that was required, rather than a completed move in inspection report. The landlords e-mailed the tenant a statement regarding the condition of the subject rental property. I find that this agreement fulfilled the landlords' duties under section 24 of the *Act*.

I find that the tenant cannot request the landlords to waive the necessity for a move in condition inspection report and then use this waiver to extinguish the landlord's rights to the security deposit under section 24 of the *Act*. I find that the landlord's right to retain the tenant's security deposit is not extinguished under section 24 of the *Act*.

Section 36(1) of the *Act* states that 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 complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the “Regulations”), the second opportunity must be in writing.

I find that the landlord complied with section 35(2) of the *Act* by providing two opportunities for the tenant to attend at the subject rental property to complete a move out condition inspection report. I find that while e-mailing the tenant a copy of R.T.B. form #22 does not comply with the service requirements of section 88 of the *Act*, I find that the tenant was sufficiently served with R.T.B. form #22 for the purposes of this *Act*, pursuant to section 71 of the *Act*, because the tenant confirmed receipt of it. Therefore, the requirements of section 17 of the Regulations have been met.

I accept the landlord’s testimony that no other person moved into the subject rental property in December of 2018. I find that the minor delay in arranging the move out condition inspection report does not invalidate the landlords’ efforts to schedule the move out condition inspection report.

Based on the above, pursuant to section 36 of the *Act*, I find that the right of the tenant to the return of her security deposit is extinguished because the landlords complied with section 35 (2) [*2 opportunities for inspection*], and the tenant did not participate on either occasion.

As the tenant was not successful in her application, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Conclusion

The tenant’s application is dismissed without leave to reapply.

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: May 10, 2019

Residential Tenancy Branch