



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD
 For the landlord: MNDLS, FFT

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a return of the balance of his security deposit.

The landlord applied for a monetary order for alleged damage to the rental unit, for authority to retain the tenant’s security deposit for the alleged damage, and for recovery of the filing fee paid for this application.

The listed parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the other’s evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to evidence submitted prior to the hearing, make submissions to me and respond to the other’s evidence.

I have reviewed the oral, written, photographic, and digital evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (the “Rules”); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to a return of the balance of his security deposit?
2. Is the landlord entitled to permanently retain the balance of the tenant's security deposit, to further monetary compensation for alleged damage to the rental unit, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on January 1, 2018, monthly rent was \$1,200.00, and that the tenant paid a security deposit of \$600.00.

The tenant submitted that he vacated the rental unit on April 1, 2019, and the landlord submitted that the tenant vacated on March 31, 2019.

The undisputed evidence is that the landlord returned \$100.00 to the tenant from his security deposit and retained the balance of \$500.00.

Both parties agree that there was no move-in or move-out condition inspection report ("CIR") or an inspection at all.

Tenant's application-

The tenant's monetary claim is \$300.00. The tenant submitted that he thought it was acceptable that the landlord retain \$200.00 from his security deposit as the landlord lent him \$80.00 and he was unable to return the key to the rental unit, as he was not able to locate it at the time.

The tenant submitted that he provided the landlord with his written forwarding address in a text message in April 2019. The landlord has returned \$100.00, according to the tenant.

The tenant's relevant documentary evidence was a copy of the text message containing the tenant's written forwarding address.

Landlord's response-

The landlord confirmed receipt of the tenants' written forwarding address by text message.

Landlord's application-

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Replacement lock	\$41.93
2. Sink supplies	\$75.74
3. Carpet/underlay	\$490.86
4. Sink repair	\$162.99
5. Screen quote	\$56.91
6. Paint cost	\$127.94
TOTAL	\$956.37

The participants provided the following oral evidence in support of and in response to the landlord's application.

Replacement lock-

The landlord submitted that the tenant did not return a key and she had to replace the door lock.

The tenant submitted that he was unable to locate the key at the time the tenancy ended.

Sink supplies, sink repair-

The landlord submitted that the tenant called a few days before he vacated and told her that he had dropped something in the sink. The tenant took the sink apart and it was required to be repaired. She bought the sink repair parts and hired a plumber to make the repairs, according to the landlord.

The tenant submitted that he does plumbing and did not damage the sink. The tenant submitted that the pipe had rusted through as it was so old, and the issue was a failure by the landlord to provide maintenance on the home.

Carpet/underlay-

The landlord submitted that the tenant left burn marks on the carpet and it needed replacing.

In response to my inquiry, the landlord said the carpet was really old, maybe 15 years.

The tenant denied damaging the carpet and it was old and in bad shape.

Screen quote-

The landlord submitted that the tenant's dog broke through the screen.

The tenant submitted that the other tenant's dog, a pit bull, pushed his head through the screen.

Paint cost-

The landlord submitted that the painting was on the house, as the tenant painted on several paint samples. Therefore, she would have to paint the whole house.

The tenant submitted that he agreed to repaint the landlord's home and that he put on the paint samples so the landlord could pick out what colour she wanted. The tenant submitted further that he would not have done that if the landlord had not approved.

The landlord's relevant evidence included photographs, quotes and receipts.

Analysis

Tenant's application-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow

the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In the case before me, the tenant provided his forwarding address in a text message. Section 88 of the Act does not recognize text messages as an acceptable method of delivery of documents.

In this case, as the tenant did not provide his written forwarding address to the landlord in a manner complying with section 88 of the Act, I find the tenant was premature in filing his application on April 8, 2019, for a return of his security deposit as the tenancy ended on or about April 1, 2019.

I reserve my findings on his application at the conclusion of my consideration of the landlord's application.

Landlord's application-

Despite section 38(1) of the Act, when a landlord fails to properly complete a condition inspection report, the landlord's right to make a claim against the security deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

In this case, the evidence was that the landlord failed to provide the tenant with an opportunity for both a move-in and move-out inspection and therefore, there is no condition inspection report for either the start or end of the tenancy.

I therefore find the landlord had extinguished her right to file her application claiming against the tenant's security deposit. As a result, I dismiss her application, without leave to reapply.

As I have dismissed the landlord's application, I find the tenant is entitled to a return of his security deposit.

Based on the testimony of the tenant and by the monetary claim in his application, **I find** that the tenant has waived his right to the return of double the security deposit under the Act as he is only seeking the return of \$300.00.

Both applications-

As I have found the tenant is entitled to a return of his security deposit and that he has waived his right to double, I find the tenant is entitled to a monetary award of \$300.00, the amount he claimed in his application.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of his monetary award of \$300.00.

Should the landlord fail to pay the tenant this amount without delay, the order may be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that cost of such enforcement is recoverable from the landlord.

As I have made this determination, I find the tenant's application must be dismissed, as his claim is now moot.

Conclusion

The tenant's application has been dismissed for the reasons stated above.

I find the tenant is entitled to a monetary award of \$300.00 and he is granted a monetary order in the amount.

The landlord's application has been dismissed.

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: July 22, 2019

Residential Tenancy Branch