



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LWZ DEVELOPMENT LTD. PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 13, 2019. 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 parties represented.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on September 1, 2017, as a one year fixed term tenancy with an expiry date of August 31, 2018. The tenancy renewed again on a fixed term tenancy with an expiry date of August 31, 2019. The tenancy ended April 30, 2019. Rent was \$3,432.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,650.00 on September 1, 2017. The Tenant said no condition inspection reports were completed for this tenancy. The Landlord agreed no condition inspection reports were completed for this tenancy but the Landlord said his agent contacted the Tenant two or three times and a walk through was done at the end of the tenancy, but no report was completed or signed.

The Tenant said she moved out of the rental unit on April 30, 2019. The Tenant’s Advocate said the Tenant gave the Landlord her forwarding address on May 7, 2019 by email as this was the method of communication between the parties and the Landlord acknowledge receiving the forwarding address by sending a partial refund of the security deposit to the Tenant at the Tenant’s forwarding address on May 13, 2019.

The Tenant's Advocate continued to say the Tenant cleaned the unit adequately when she left and the Tenant believes there was some normal wear and tear, but the unit was in better condition at the end of the tenancy than it was at the start of the tenancy.

The Advocate said the Tenant is requesting double her security deposit returned as the Landlord did not comply with the Act. The Landlord did not make an application to retain part or all the deposit, the Landlord did not get the Tenant's agreement to retain the deposit and the Landlord did not return the full deposit. The Advocate continued to say the Landlord returned \$915.00 of the \$1,650.00 security deposit on May 13, 2019. Consequently the Tenant's Advocate said the Tenant is now applying for the return of double the security deposit (\$1,650.00) in the amount of \$3,300.00 less the \$915.00 the portion the Landlord returned in May 13, 2019.

The Advocate said the Tenant is also requesting to recover the filing fee of \$100.00.

The Landlord said the Tenant left the unit in poor condition and she left garbage and furniture in the parking lot. The Landlord said they submitted photographs of the garbage and condition of the rental unit. As well the Landlord submitted receipts for the cleaning and garbage hauling that they paid. The Landlord said they were justified in retaining \$735.00 of the Tenant's security deposit.

The Landlord called a witness D.B. who testified that he saw the Tenant leave two bags of garbage and a couch in the back parking lot at the end of her tenancy. As well the witness D.B. said the Tenant had a dog and the Tenant left a bag of dog feces in the parking lot when she left.

The Tenant said she agrees that she left two bags of garbage and a couch in the parking lot, but when he was told she had to remove them she and her witness A.B. removed the garbage and the couch. The Tenant called witness A.B. and the witness A.B. confirmed that they removed the garbage and the couch from the Landlord's parking lot. The witness A.B. continued to say there was a lot of garbage in the parking lot as a number of people were moving out and the garbage was piling up. Witness A.B. said he believes they removed the Tenant's garbage and her belongings. The Tenant said when she left they had removed all of her things and her garbage.

The Landlord said the Tenant's testimony is not consistent with the Landlord's photographs and their witness D.B.'s testimony. The Landlord said they hire people to remove the Tenant's garbage and furniture.

The Landlord said in closing they retained \$735.00 of the Tenant's security deposit to cover their costs to clean the unit and remove the Tenant's garbage. The Landlord said he believes this is outside of the condition inspection report as the garbage was in the parking lot.

The Tenant's Advocate said in closing the Landlord did not comply with the Act regarding the return of the Tenant's security deposit and the Landlord has not proven the garbage or furniture was the Tenants. The Advocate said the Tenant is apply for double the return of a security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Analysis

Section 23 and Section 35 say the landlord and tenant together **must** inspect the condition of the rental unit at the start of the tenancy and at the end of a tenancy.

(a) on or after the day the tenant starts or ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) 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.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

Section 24 and Section 36 say 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 sections 23(2) and 35 (2)[2 *opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, **the right of the 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 sections 23 (2) and 35 (2) [2 *opportunities for inspection*],

(b) having complied with sections 23 (2) and 35 (2), does not participate on either occasion, or

(c) does not complete the condition inspection reports and give the tenant a copy of it in accordance with the regulations.

I find from both the Tenant and Landlord's testimony that the Landlord did not complete the move in condition inspection report or the move out condition inspection report. Consequently under sections 24 and 36 of the Act the Landlord's claim against the Tenants' security deposit is extinguished. I dismiss the Landlord's application to retain the Tenant's security deposit as compensation for damage or loss to the unit.

As well, I find that the Landlord has not established the state or condition of the rental unit at the start of the tenancy therefore it is not possible to determine if the Tenants caused any damage or loss to the unit or how much damage or loss the Tenants may have caused. As a result I find that the Landlord has not established grounds to prove that the Tenants solely caused any damage or loss to the rental unit beyond normal wear and tear. Further, I find that the Landlord has not provide conclusive evidence that the Tenant left the unit in poor condition or that the Tenant left garbage or furniture at the rental unit or on the rental property. Consequently, I find the Landlord retained \$735.00 of the Tenant's security deposit is in violation of the Act.

Section 38 (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 accept the Tenant's testimony that she gave the Landlord a forwarding address in writing by email on May 7, 2019. The Landlord requested the forwarding address by email and the Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by May 22, 2019 to retain the Tenant's security deposit. Consequently I find for the Tenant and grant an order for double the security deposit of \$1,650.00 in the amount of $\$1,650.00 \times 2 = \$3,300.00$ less \$915.00 that the Landlord has already returned to the Tenant.

As the Tenant has been successful in this matter I order the Tenant to recover the cost of the filing fee of \$100.00 from the Landlord.

In summary a monetary order has been issued to the Tenant for the following amount:

Double the Security Deposit	\$ 3,300.00	
Recover filing fee	\$ 100.00	
Subtotal		\$ 3,400.00
Less		
Amount of Security deposit returned	\$ 915.00	
Subtotal		<u>\$ 915.00</u>
Balance owing		<u>\$ 2,485.00</u>

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$2,485.00 to the Tenant. The order must be served on the Landlord/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: November 26, 2019

Residential Tenancy Branch