



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) seeking a monetary order for a return of his security deposit and pet damage deposit, doubled, a monetary order for compensation, and for recovery of the filing fee paid for this application.

The tenant's legal counsel and agents for the landlord appeared, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, not all details of the parties' respective submissions and or arguments are reproduced here. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Prior to the hearing, the landlord submitted evidence which suggested that the Act may not apply to this dispute. The issue of jurisdiction was addressed early in the hearing.

The tenant's legal counsel stated that the matter of jurisdiction has previously been decided as another arbitrator in a previous dispute resolution hearing between these parties found that the Act applied to this tenancy.

Although this Decision was not submitted into evidence, the legal counsel read from the prior Decision and as well, referred me to the file number.

I reviewed the Decision, which was dated October 22, 2018, the other arbitrator found that the Act applied to this tenancy as the landlord's facility does not provide assistance and supportive living.

The parties were informed during the hearing, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision October 22, 2018, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

The file number for the earlier Decision is located on the style of cause page on this Decision.

As a result, the hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord and to recovery of his filing fee?

Background and Evidence

This tenancy began on July 28, 2016 and ended on February 1, 2019. Monthly rent was \$2,400.00 and the tenant paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00, both of which have been retained by the landlord. The parties provided a copy of the written tenancy agreement.

The tenant's legal counsel submitted that the landlord was provided the tenant's written forwarding address in a letter sent by registered mail on September 12, 2019. The legal counsel provided a copy of the letter and proof of the tracking history, showing the letter was delivered. The tenant's legal counsel sent the letter to the landlord.

The tenant's legal counsel also submitted that the tenant paid a room key deposit of \$200.00, which has not been returned.

The tenant's monetary claim is \$5,100.00, which includes the tenant's security deposit of \$1,200.00 and pet damage deposit of \$1,200.00, doubled, the room key deposit of \$200.00, and the filing fee of \$100.00.

Landlord's response-

The landlord confirmed receipt of the tenant's written forwarding address, as declared by the tenant's legal counsel, but claimed that they did not have to return the deposits due to the extensive damage to the rental unit caused by the tenant. The landlord also argued that they were allowed to keep security and pet damage deposits due to such language in the written tenancy agreement.

The landlord also claimed that the tenant, through his legal counsel, agreed that he would pay for damage in the rental unit.

Tenant's legal counsel's rebuttal-

The legal counsel said that there was a *without prejudice* discussion between the two parties as to a reasonable cost for some damage; however, the parties were not able to come up with a sum on which they could agree.

The legal counsel provided a copy of the letter used in discussions.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit and pet damage deposit has been extinguished, a landlord is required to either return a tenant's security deposit and pet damage deposit or make an application for dispute resolution to retain the security deposit and pet damage deposit **within 15 days** of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord may not make a claim and **must** pay the tenant double the security deposit and pet damage,

pursuant to section 38(6) of the Act. I do not find that the tenant has extinguished his rights to the return of his security deposit and pet damage deposit. (my emphasis)

In the case before me, the undisputed evidence shows that the tenancy ended on February 1, 2019, and that on September 19, 2019, the landlord received the tenant's written forwarding address in a letter dated September 12, 2019, as shown by the Canada Post tracking information provided by the tenant and confirmed by the landlord.

Due to the above, I find the landlord was obligated to return the tenant's security deposit and pet damage deposit, in full, or make an application for dispute resolution claiming against the two deposits by October 4, 2019. In contravention of the Act, the landlord retained the security deposit and pet damage deposit, without filing an application.

I therefore find the tenant is entitled to a return of his security deposit and pet damage deposit of \$1,200.00 each. I also find that these two deposits must be doubled.

The tenant's legal counsel also provided undisputed evidence that the tenant was charged \$200.00 for a room key deposit and that this fee has not been returned.

Section 6(1) of the Regulations provides that if a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is

- (a) refundable upon return of the key or access device, and
- (b) no greater than the direct cost of replacing the key or access device.

Upon review of the evidence before me I conclude that the \$200.00 deposit charged by the landlord for the room key deposit meets the requirements of section 6(1) of the Regulations as being a refundable fee paid by the tenant.

Accordingly, I grant the tenant's application for the return of his room key deposit of \$200.00.

Due to the above, I therefore find the tenant has established a total monetary claim of \$5,100.00, comprised of his security deposit of \$1,200.00, doubled to \$2,400.00, his pet damage deposit of \$1,200.00, doubled to \$2,400.00, his room key deposit of \$200.00, and the filing fee paid for this application of \$100.00, which I have awarded him due to his successful application.

I grant the tenant a monetary order in the amount of \$5,100.0 and it is included with this Decision.

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

Conclusion

The tenant's application for monetary compensation is granted as he is awarded a monetary order in the amount of \$5,100.00 as noted above.

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: February 26, 2020

Residential Tenancy Branch