



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Patton Vu Holdings
and [tenant name suppressed to protect privacy]

FINAL DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with a tenant's application for return of the security deposit and return or compensation for a dishwasher left at the rental unit. The proceeding commenced under the *ex-parte* Direct Request procedure and on October 8, 2020 an Adjudicator issued an Interim Decision ordering the matter be set for a participatory hearing. The participatory hearing was scheduled with me for December 15, 2020, via teleconference call, and both parties appeared or were represented on December 15, 2020; however, the hearing time expired before the matter could be fully heard. I adjourned the matter and issued a 2nd Interim Decision on December 15, 2020. The Interim Decisions of October 8, 2020 and December 15, 2020 should be read in conjunction with this decision.

The hearing reconvened on March 9, 2021, via teleconference call, and on that date only the tenant appeared. I left the telephone line open for 15 minutes to give the landlord the opportunity to appear and during that time there was no appearance on part of the landlord. The tenant confirmed on March 9, 2021 that the parties had not reached a settlement agreement during the period of adjournment. The hearing continued without the landlord represented or presenting further evidence.

During the participatory hearing, the tenant withdrew her request for return or compensation for the dishwasher and the tenant limited her claim to return of the security deposit.

Issue(s) to be Decided

1. Is the tenant entitled to return of the security deposit?
2. Award of the filing fee.

Background and Evidence

The tenancy started on March 1, 2020 and ended on August 15, 2020. The tenant was required to pay rent of \$3400.00 and had paid a security deposit of \$1700.00 and a pet damage deposit of \$1700.00. After the tenancy ended, the landlord refunded the pet damage deposit to the tenant.

At issue is the tenant's security deposit of \$1700.00. It was undisputed that the tenant had authorized the landlord to retain the security deposit, in writing, on the move-out inspection report. However, the tenant is making this Application for Dispute Resolution on the basis she authorized the landlord to retain the security deposit, and her dishwasher that she valued at \$1100.00, under false pretenses and fraud.

Both parties referred to an email exchange on August 6, 2020. In the email the landlord informed the tenant that she obtained estimates to remedy alterations and/or repair damage to the rental unit in the amount of \$6778.00 and \$5650.00. In the emails that followed, the parties agreed the landlord may retain the security deposit and the tenant's dishwasher in satisfaction of the costs to remedy and repair the alterations or damage. This agreement was reduced to writing on August 16, 2020 when the tenant signed the move-out inspection report authorizing the landlord to retain her security deposit.

The tenant submitted that based on the landlord's estimates contained in the email of August 6, 2020 she agreed to leave the dishwasher and sign over her security deposit to compensate the landlord and avoid being sued for damage; however, after the tenancy ended she received a text message from the landlord. It was evident the text message was not intended for the tenant. Rather, the landlord's text message was intended for the landlord's stepfather who is a contractor. The text message reads:

In the meantime, could you pls calculate and email me your time at [rental unit street number], broken down by (1) fixes related to [name of tenant] (patch and paint kitchen etc) and (2) extras I wanted (stair fix, toilet, etc)? I need to reconcile her damage deposit ASAP and need your numbers to do so. I only legally have until Monday I believe. Please pretend bill me your higher hourly rate for this in case I have to show her. When you actually bill me though, please of course use our "special family rate" (xxo thanks again!)

The tenant responded to the landlord's text message by sending the landlord further texts giving the landlord until August 24, 2020 to refund her security deposit or she would make a claim with the Residential Tenancy Branch for its return, based on fraud. The landlord further responded to the tenant by claiming the actual costs were close to those estimated. The landlord did not refund the security deposit to the tenant and the tenant proceeded to file an Application for Dispute Resolution.

During the hearing, the tenant maintained that she signed over her security deposit to the landlord based on what she now considered to be fraud and false pretences, specifically inflated amounts put forth by the landlord in providing her with estimates. The landlord's agent was of the position that the estimates she provided to the tenant were not far off from the actual costs. The landlord referred to a spreadsheet included in the tenant's evidence that the landlord had prepared. The tenant indicated she was in disagreement with several of the charges appearing on the spread sheet.

I informed the parties during the December 15, 2020 hearing that we would proceed to go over the reasonableness of the amounts appearing in the spreadsheet when the hearing reconvened as the hearing time had expired at that point. However, as indicated earlier in this decision, the landlord did not appear for the reconvened hearing to present the reasonableness of the amounts appearing on the spreadsheet.

I cautioned the tenant that if she were succeed in having the security deposit returned to her that the landlord would be in a position to pursue to the tenant for damages or losses suffered by the landlord as a result of the tenancy. The tenant stated she understood and confirmed she still sought return of the security deposit and she would respond to any claims the landlord were to make against her.

Analysis

As the applicant the tenant bears the burden to prove her case. The burden is based on the balance of probabilities. Based on everything before me, I provide the following findings and reasons.

Under section 38 of the Act, a landlord may retain the tenant's security deposit if the tenant authorizes the landlord to do so, in writing. It is undisputed that the tenant gave the landlord written authorization to retain the security deposit when she signed the move-out inspection report on August 16, 2020.

The issue before me is whether the tenant's authorization was given to the landlord under false pretences or fraud, on part of the landlord's agent, as alleged by the tenant.

Section 91 of the Act provides that:

91 Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

General speaking, under common law, where an agreement is entered into based on material misrepresentation or fraud by one party, the agreement will be set aside.

Given the common law applies to landlords and tenants, I find I have authority to set aside or rescind the agreement between the parties if it was entered into based on fraud. Accordingly, I proceed to analyze whether the landlord fraudulently obtained the tenant's consent to retain the security deposit.

It is undisputed that the landlord had put forth two estimated sums to remedy alterations or damage to the tenant on August 6, 2020 and subsequent to receiving those amounts, the tenant agreed the landlord may retain her security deposit in satisfaction of the landlord's losses, as estimated.

Upon review of the spreadsheet sent to the table in support of the estimated amounts, I note that the source of the amounts appearing on the spreadsheet is not provided. The tenant was of the position that after receiving the text message from the landlord, whereby the landlord requests a "pretend bill" for a higher amount than the amounts were inflated. The landlord's agent was to support the reasonableness of the amounts estimated versus actual costs at the reconvened hearing; however, she did not appear for the reconvened hearing. As such, I find the landlord did not support the reasonableness of the estimates and given the text message sent to the tenant that was intended for the landlord's stepfather, I accept that the amounts the landlord presented or intended to present to the tenant were likely inflated and not a reasonable representation.

In light of the above, I am of the view that a fair and just resolution to this matter is to set aside or rescind the tenant's authorization for the landlord to retain the security deposit and the landlord may file a claim against the tenant for any damages or loss incurred as a result of this tenancy, if any.

I further award the tenant recovery of the \$100.00 filing fee paid for her Application for Dispute Resolution.

In keeping with all of the above, I provide the tenant with a Monetary Order in the sum of \$1800.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the sum of \$1800.00 to serve and enforce upon the landlord.

Having ordered the security deposit be returned to the tenant, essentially rescinding the agreement between the parties for the landlord to retain the security deposit as compensation for damages or loss the landlord incurred, if any; the landlord remains at liberty to file a claim against the tenant for damages or loss incurred, if any.

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: March 17, 2021

Residential Tenancy Branch