



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Boundary Management Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD-DR, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of her security deposit; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated February 10, 2021, which should be read in conjunction with this decision.

The adjudicator said that the tenant did not provide a completed proof of service of a forwarding address or the second page of the direct request worksheet and as a result, the adjudicator ordered the direct request proceeding be reconvened to a participatory hearing.

At this participatory hearing, both parties were represented, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

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

I have reviewed all oral and written evidence 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-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to Residential Tenancy Branch (RTB) Rule 6.11.

As another preliminary matter, the landlord's agent (landlord) confirmed receiving the tenant's evidence. The landlord said she had the landlord's evidence before her, but was not clear when the landlord's evidence was submitted to the RTB or to the tenant. The tenant submitted that she has not received any evidence from the landlord. The landlord here explained that as the resident manager, she is not in charge of administrative matters such as submitting evidence for dispute resolution hearings, as that comes from the head office.

As there was no proof that the landlord sent evidence to the RTB and the tenant, as required by the Rules, I only allowed the landlord to testify from her evidence.

I also removed the name of the landlord's agent here, SL, as a co-respondent listed in the tenant's application for the reason that the corporate landlord listed on the style of cause page is the only named landlord in the written tenancy agreement and for the reason the party attending the hearing was acting as an agent, only.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit and to recover the cost of the filing fee?

Background and Evidence

Filed into evidence by the tenant was a written tenancy agreement showing a month-to-month tenancy start day of February 1, 2020, monthly rent of \$1,150, and a security deposit of \$575 being paid by the tenant to the landlord.

The tenant said the tenancy ended on July 31, 2020, when she vacated the rental unit.

The tenant said she provided the landlord with her written forwarding address on a piece of loose-leaf notebook paper on November 30, 2020, in the office of the residential property. The tenant said that she had provided her forwarding address initially to the assistant resident manager on an earlier date, to give to the landlord here, but provided it again, to ensure it was received. The tenant said that she handed her written forwarding address to the landlord present here. Filed into evidence was a photo of the written forwarding address, a photo of RTB form 47, showing another written forwarding address being provided to the landlord, and another photo of the written forwarding address on a piece of notebook paper.

The tenant said that she had received a cheque for a minimal amount from the landlord six months after vacating the rental unit, for a partial amount, but that she refused to accept it. The tenant said that she left the rental unit clean, cleared out, and undamaged and did not agree the landlord could retain any portion of her security deposit.

In response to my inquiry, the tenant said that there was not a move-in or move-out inspection with the landlord or a move-in or move-out condition inspection report (Report).

Landlord's response –

The landlord said she received the tenant's written forwarding address on a small piece of paper, on November 30, 2020, in her office. The landlord said that a cheque was sent to the tenant from head office prior to November 30, 2020, in the amount of \$233.

The landlord submitted that there was no evidence that the carpet and drapery had been cleaned.

The landlord said that the tenant did not attend a move-out inspection on the scheduled date and time.

As to the move-in inspection, the landlord said they conducted the move-in inspection on February 1, 2020, there was a move-in Report, and that she was looking at the tenant's signature on the document.

The landlord confirmed that she did not give the tenant a copy of the move-in Report, as the tenant did not ask for one.

The landlord said that the tenant did not attend a move-out inspection on the scheduled date and time. There was no evidence submitted that the landlord offered the tenant a second opportunity to attend a move-out inspection.

The tenant said she told the landlord that she was running late on the last day of the tenancy and needed extra time to finish cleaning. The tenant submitted she called the assistant resident manager to arrange for a later inspection, with no success.

The tenant submitted that she called the landlord several times at the end of the tenancy to inform them she cleaned and laundered the rental unit prior to departure.

Analysis

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

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay any security deposit to the tenant or make an application for dispute resolution claiming against the security deposit. This is a requirement unless the tenant's right to the security deposit has been extinguished under section 38(2).

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, I do not find the tenant's right to a repayment of her security deposit has been extinguished.

Under section 24(2) of the Act, a landlord's right to claim against the security deposit are extinguished if they do not arrange for and conduct a move-out inspection and complete the inspection report and give the tenant a copy in accordance with the regulations. I interpret this part of the Act to mean the landlord may not retain any portion of the tenant's security deposit, if they have not complied.

In this case, I find the landlord extinguished their right to retain any portion of the tenant's security deposit as they have done here or make a claim against the security deposit for damages, as the landlord confirmed that she did not give the tenant a copy of the move-in Report. Also, the landlord failed to submit a copy of the move-in Report.

In this case, I find no clear evidence of the tenant providing her written forwarding address prior to November 30, 2020; however, the landlord confirmed receiving the written forwarding address of the tenant on November 30, 2020.

I therefore find the landlord was obligated to return the tenant's security deposit, in full, no later than December 15, 2020, 15 days after the date the tenant's written forwarding address was received.

In contravention of the Act, the landlord kept part of the tenant's security deposit, without filing an application within 15 days, and returned only a portion.

As I have found the landlord had extinguished their right to retain any part of the tenant's security deposit, I **order** the landlord to repay the tenant's security deposit of \$575. I also find that the security deposit must be doubled, as noted above.

I grant the tenant recovery of her filing fee of \$100, due to her successful application.

I therefore find the tenant has established a monetary claim of \$1,250, comprised of her security deposit of \$575, doubled to \$1,150, and the filing fee paid for this application of \$100.

I grant the tenant a monetary order in the amount of \$1,250.

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 **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application is successful and she is granted a monetary award in the amount of \$1,250 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 5, 2021

Residential Tenancy Branch