



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: MNDL-S, MNDCL-S, FFL
Tenant: MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a residential tenancy dispute.

The landlord applied on August 2, 2022 for:

- compensation for damage caused by the tenant, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit;
- compensation for monetary loss or other money owed, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

The tenant applied on August 23, 2022 for:

- the return of the security deposit; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant confirmed receipt of the landlord's hearing materials.

The landlord initially testified that she received from the tenant only a flash drive and a copy of the Notice of Dispute Resolution Proceeding (NDRP). The tenant testified that he had sent the landlord a flash drive and a stack of pages by registered mail on September 17, 2022 and provided a tracking number. When I questioned the landlord further, she confirmed that the items she had received from the tenant included a flash

drive, and numerous hard copy documents. Based on the evidence before me, I find the tenant served his NDRP and evidence on the landlord by registered mail on September 17, 2022 in accordance with section 89 of the Act, and I deem it received by the landlord on September 22, 2022 in accordance with section 90 of the Act.

Preliminary Matter

As the landlord testified she wished to withdraw her claim for compensation for monetary loss or other money owed, I dismiss this claim with leave to reapply.

Issues to be Decided

- 1) Is the landlord entitled to compensation for damage caused by the tenant, their pets, or their guests to the unit or property, in the amount of \$1,197.50?
- 2) Is the landlord entitled to the filing fee?
- 3) Is the tenant entitled to return of the security deposit?
- 4) Is the tenant entitled to return of the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agreed on the following facts. The tenancy began December 1, 2019 and ended July 31, 2022; rent was \$2,395.00, due on the first of the month; and the tenant paid a security deposit of \$1,197.50, which the landlord still holds. A move in condition inspection was completed at the beginning of the tenancy, and a copy of the report given to the tenant.

The landlord testified the tenant vacated the unit a week before July 31; the tenant testified he “left with the majority of [his] things” between July 24 and 26.

The landlord testified that they gave the tenant multiple opportunities to participate in a move out inspection. The tenant did not agree that was the case. Submitted as evidence by the landlord is an email to the tenant, dated July 31, 2022, stating that the inspection originally planned for July 23 or 24 was rescheduled to July 31, at the request of the tenant.

The parties agreed they scheduled the move out condition inspection for July 31, 2022. Submitted as evidence is a copy of a completed RTB-22 form *Notice of Final Opportunity to Schedule a Condition Inspection*, signed by the landlord, proposing that they conduct the inspection on July 31. The landlord submitted that she served it on the tenant before July 31 by putting it under the door.

The landlord testified the move out inspection was not completed because the tenant did not show up. The tenant testified that he had two agents attend to complete the inspection on his behalf, and that though they provided the landlord with signed letters from the tenant and provided identification, the landlord refused to conduct the move out condition inspection. The tenant testified that the landlord did not provide him with a copy of a move out condition inspection report. The landlord testified that she later conducted an inspection on her own and emailed a copy of the report to the tenant on July 31, 2022. A copy of the email was not presented as evidence.

The landlord testified the tenant did not provide a forwarding address in writing. The tenant testified he provided his forwarding address in writing by email when he gave notice to vacate, which he testified was probably June 30, 2022. A copy of the email was not presented as evidence. The tenant testified that on July 31, 2022 his agents attempted to give a copy of the tenant's forwarding address to the landlord, but she would not sign the Proof of Service form. Submitted as evidence is a completed RTB-41 *Proof of Service Tenant Forwarding Address* form, dated July 31, 2022.

The parties agreed the tenant did not consent in writing for the landlord to retain any of the security deposit.

The landlord testified they seek compensation in the amount of \$1,197.50 because that is the amount of the security deposit, and the tenant extinguished his right to the return of the security deposit, pursuant to section 36 of the Act, because he did not participate in the move out condition inspection. The landlord testified she refused to conduct the inspection with the tenant's agents because the tenant did not notify her ahead of time that an agent would be acting for him, and the landlord did not know one of the agents and had had a previous conflict with the other. The landlord testified that the tenant had failed to let the landlord know about a leak under the sink, resulting in damage, and that the tenant had damaged the landlord's couch and a shower curtain.

The tenant testified that he had notified the landlord of the leak as soon as he found it, that the damage to the couch, which was not new at the beginning of the tenancy, was simply wear and tear, and that he did not clean the shower curtain liner.

Analysis

Section 36 of the Act states that the right of a tenant to the return of the security deposit is extinguished if the landlord provided at least two opportunities to participate in an inspection, and the tenant has not participated on either occasion.

The tenant testified that the landlord did not provide at least two opportunities for him to participate in a move out condition inspection. The landlord testified that they provided the tenant with multiple opportunities, and submitted documentary evidence in support. Also submitted as evidence is a copy of a completed RTB-22 form *Notice of Final Opportunity to Schedule a Condition Inspection*, as required by section 17(2) of the *Residential Tenancy Regulation* (the Regulation).

Section 15 of the Regulation states that a tenant may appoint an agent to act on the tenant's behalf to attend a condition inspection and sign a condition inspection report, but that the tenant must advise the landlord, in advance of the condition inspection, that an agent will be acting for the tenant.

The landlord testified that the tenant failed to notify her in advance of the inspection that he would be represented by an agent, and that the two agents who attended behaved aggressively towards the landlord.

The tenant testified that he provided the agents with letters stating they were acting on his behalf, but the tenant did not testify that he advised the landlord ahead of the inspection that the agents would be acting on his behalf. As the tenant did not advise the landlord before the parties met to conduct the inspection, I find the tenant failed to provide advanced notice an agent would be acting on their behalf, as required by section 15(2) of the Regulation. I find that presenting the letters at the time of the inspection did not meet the requirement to provide advance notice. Therefore, I find the tenant failed to attend the condition inspection, and has extinguished his right to the return of the security deposit.

Accordingly, I find the landlord is entitled to retain the tenant's security deposit of \$1,197.50.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. As the tenant is unsuccessful in their application, I decline to award the filing fee. As the landlord is successful in their application, I order the tenant to reimburse the landlord for the filing fee.

I find the landlord is entitled to a monetary order for \$100.00, the amount they paid to file for dispute resolution.

Conclusion

The tenant's application is dismissed.

The landlord's application is granted.

The landlord is granted a monetary order in the amount of \$100.00, to be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 10, 2023

Residential Tenancy Branch