



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order as against the landlords for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for return of all or part of the security deposit or pet damage deposit; and to recover the filing fee from the landlords for the cost of the application.

The tenant attended the hearing with an Articled Student and an Interpreter, who was affirmed to well and truly interpret the hearing from the English language to the tenant's Native language and from the tenant's Native language to the English language to the best of the Interpreter's skill and ability. The individually named landlord also attended and represented the named landlord company.

The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for amounts paid to the landlord for damages?
- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?
- Should the tenant recover the filing fee from the landlord?

Background and Evidence

The tenant testified that this fixed-term tenancy began on June 1, 2018 and reverted to a month-to-month tenancy after May 31, 2019, but does not recall the date that the tenancy ended. Rent in the amount of \$1,250.00 was payable on the 1st day of each month, with a pro-rated amount for the first partial month of the tenancy, which was increased by \$18.75 to \$1,268.75 effective January 1, 2022 and again by \$25.37 to \$1,294.12 effective January 1, 2023. On April 11, 2018 the tenant paid a security deposit to the landlord in the amount of \$625.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided for this hearing. The rental unit is a townhouse.

The tenant gave the landlord notice to end the tenancy on August 30, 2023 effective September 30, 2023, which also contained the tenant's forwarding address, on a form given to the tenant from the landlord's agent, and was told it was to hand over the rental unit and provide a forwarding address to get the security deposit back. The tenant signed the form believing the tenant would receive the security deposit back. A copy of the form has been provided for this hearing, which is signed by the tenant and a landlord dated August 30, 2023 but does not contain a forwarding address of the tenant.

A move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy, however the tenant did not participate in the move-in portion and does not recall participating in the move-out portion.

Damages were pre-existing at the beginning of the tenancy and the landlord said they would make the repairs, but never did. The tenant does not read or speak English at all, and relied on and believed what the tenant was told and was later surprised that there was an extra amount on the form saying that the tenant owed an additional \$270.00.

The tenant claims double the amount of the security deposit and interest.

The landlord testified that when the tenant gave notice to end the tenancy, the form was given to the tenant in the office on August 30, 2023, and the tenant had signed it. Shortly after, on September 6, 2023 the landlord did a pre-inspection report to see what had to be done to re-rent. The tenant was in attendance and at that time used a phone App for language, which he often did when the parties communicated.

Everything that the landlord found during the pre-inspection was explained fully to the tenant, who said he understood. A few days after, the tenant had assistance and said

he didn't understand why he was being charged, and had an Immigration Services person with him. The person who did the move-out condition inspection report wrote the tenant's forwarding address on the form; the tenant provided the address, pulling it up on his phone so the person could write it on the condition inspection report. The tenant speaks some English and uses the phone App and has help from Immigration services so would understand fully what has happened over the years, but still requires some assistance.

The landlord has provided a Security Deposit Statement for this hearing setting out the \$625.00 security deposit and \$300.00 for suite cleaning, \$200.00 for carpet cleaning, \$75.00 for blind replacement, \$150.00 for painting and repairs to holes in the amount of \$140.00 and door knob damage of \$40.00. It shows that the security deposit was deducted from the amount owed to the landlord. A copy of the move-out condition inspection report was sent to the tenant on October 3, 2023 from the landlord's head office.

SUBMISSIONS OF THE TENANT'S ARTICLED STUDENT:

The tenant submits that he always used a phone App and Immigration Services, and is unable to read or write or speak English. The tenant did not know what the essence of the contract was. Jurisprudence on *non est factum* sets out principles and carelessness. Under the second principle, the tenant thought the notice to end the tenancy was to be returned to him, and did not know he was being charged a fee by the landlord, and the tenant is still not fluent in English. It is not carelessness by the tenant, having testified that he trusted the landlord and the landlord's agent. A copy of the Legal doctrine has been provided for this hearing. Also provided are cases from the Supreme Court of British Columbia. The tenant raises *non est factum*; he understood it to be fundamentally different than what he was led to believe. The proper procedure to keep the security deposit was not followed, and the landlord should have made an application.

SUBMISSIONS OF THE LANDLORD:

The tenant had an adviser from Immigration Services, which he used on numerous occasions and used his phone App to translate so he could fully understand. The tenant signed the condition inspection report agreeing to the charges, so the landlord did not have to apply to keep the security deposit. All charges were fully explained to the tenant on September 6, 2023 prior to signing it, and after that, Immigration Services asked about broken items in the rental unit. The parties went over all charges in the landlord's office, so the tenant understood he would not get a refund of the security deposit.

Analysis

I have reviewed the 1982 *Canlii* document provided by the tenant's Articled Student. In the case, the party signed a document without reading it. The Court found that: "...any person who fails to exercise reasonable care in signing a document is precluded from relying on the plea of *non est factum* as against a person who relies upon that document in good faith and for value." I have also reviewed the cases provided by the tenant's Articled Student, which explain the Court's rulings respecting signing a document believing that the person was signing something entirely different.

In this case, the tenant signed the move-out condition inspection report indicating that the tenant agreed to the landlord keeping the security deposit. The landlord did not make an application claiming against the security deposit because the tenant agreed in writing that the landlord could keep it, and no application was necessary.

The tenant testified that the agent of the landlord at the time told the tenant that it was to hand over possession of the rental unit and to retrieve the security deposit, and I accept that testimony. The tenant also testified that the tenant does not speak or read English. The landlord's position is that the tenant, whom the landlord is aware does not speak English fluently, had the assistance of a phone App and an Immigration Services person. However, what's missing for me is whether or not the Immigration Services person spoke the tenant's Native language, or whether or not the tenant and the Immigration Services person both relied on a phone App.

I have also reviewed the condition inspection reports, as well as the Security Deposit Statement provided by the landlord, which does not contain a signature of the tenant.

This is not a case of whether or not the tenant caused damage to the rental unit, but a case of whether or not the tenant intended to allow the landlord to keep the security deposit. Knowing that the tenant was not fluent in English, I do not believe that the landlord could legally interpret the signature of the tenant on the move-out condition inspection report to be a legal written agreement. Having accepted the tenant's testimony, through an Interpreter, that an agent of the landlord explained that signing the document was to hand over the rental unit and to get the security deposit refunded, I find that the doctrine of *non est factum* applies.

A landlord is required to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount of the security deposit.

In this case, the tenancy ended on September 30, 2023 and the landlord received the tenant's forwarding address in writing the same day. The landlord has not returned the security deposit and has not made an application to keep it. Therefore, I find that the tenant is entitled to double the amount of the security deposit. Doubling does not apply to interest.

The tenant paid a security deposit in the amount of \$625.00 to the landlord on April 11, 2018, and calculating the interest from that date to the date of this hearing amounts to \$24.92. I find that the tenant is entitled to \$1,250.00, being double the amount of the security deposit and \$24.92 interest, for a total of \$1,274.92.

The evidence also shows that on October 18, 2023 the tenant paid the \$270.78 amount due to the landlord on the Security Deposit Statement, which the tenant claims from the landlord. Since the landlord has not made an application for damages, I order that the landlord return that amount to the tenant.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$1,645.70. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,645.70.

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: October 03, 2024

Residential Tenancy Branch