Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 7, 2014, by the Tenant to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double her security and pet deposits; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The parties confirmed they entered into a fixed term tenancy agreement that began on May 1, 2013, and was scheduled to end on April 30, 2014. Rent was payable on the first of each month in the amount of $1,250.00 and on March 28, 2013, the Tenant paid $625.00 as the security deposit plus $625.00 as the pet deposit. The parties attended the move-in inspection and signed the condition inspection report form on April 30, 2013.

The Tenant testified that her documentary evidence clearly outlines her submission with supporting documents and photos of text messages and photos of the rental unit. She

summarized her claim by stating that she ended her tenancy early after the Landlord agreed once he found a replacement tenant. She attended the move out inspection on October 28, 2013 during which the Landlord told her everything was okay and she would get her deposits in the mail. She said she showed the Landlord her driver's license which had her forwarding address written on it, and that the Landlord said he had that address on file because she had provided him with a copy of her licence at the start of the tenancy.

The Tenant argued that the Landlord did not have the condition inspection report form with him during the inspection on October 28, 2013, and she did not receive a copy of it until March 7, 2013, when she received the Landlord's evidence by e-mail.

The Tenant submitted that on November 14, 2013, she sent a text message to the Landlord, to follow up on the return of her deposits and included her address. She received a reply on November 16, 2013 indicating she owed the Landlord $3,750.00. It was after that message that she realized the Landlord had attempted to cash her November 1, 2013 post dated rent cheque, which was returned NSF. She followed up her text message with a written letter with her forwarding address and sent it registered mail on November 29, 2013. The Landlord refused to return her post dated cheques so she closed that bank account.

The Landlord testified that the Tenant broke her one year lease and that he explained to her verbally that she would be required to pay liquidated damages. He refuted the Tenant's testimony and argued that he had the condition inspection report form with him at the move out inspection. He claimed the Tenant signed the form agreeing for him to keep the deposits to offset the costs of repairs.

The Landlord stated that he showed the Tenant the repair invoice, dated October 23, 2013, during the move out inspection, and that she signed agreeing to pay for the damages but refused to sign the bottom of the form because she was upset. He denied having the Tenant sign agreeing for them to keep the deposits at the beginning of the tenancy. He also denied the Tenant showing him her drivers' license at the move out inspection.

The Landlord argued that the Tenant took a picture of the condition inspection report form with her phone on October 28, 2013 and that was to be her copy. He stated that the first time he sent her a copy of the form was by e-mail March 7, 2014.

The Landlord submitted that he had entered the rental unit with a repair contractor to complete the required repairs noted on the October 23, 2013 invoice, without notifying the Tenant, because he had prior permission to show the rental unit to prospective tenants. He argued that he did not need to inform the Tenant the reason he was entered or that he was having the repairs done.

The Landlord confirmed receipt of the Tenant's forwarding address by registered mail sometime in December 2013. He indicated that he sought guidance from the staff at the

Residential Tenancy Branch and they told him he had done things correctly. He submitted the Tenant's post dated cheques to the *Residential Tenancy Branch* with his evidence.

In closing, the Tenant stated that she was not angry at the move out because she was told she would be getting her deposits back. She did not refuse to sign at the bottom of the form and she did not take a picture of the report form with her phone because the Landlord did not have it with him. She pointed out that the unit had been re-rented by October 05, 2013, so the Landlord was no longer showing the unit and had no right to enter the suite. She disputes that any repairs were completed during October as she was still residing there and certainly would have noticed if repair work was being completed.

The parties were given the opportunity to settle these matters; however, the Tenant chose to proceed with her application.

Analysis

After careful consideration of the foregoing, all documentary evidence, and on a balance of probabilities I find as follows:

I favor the Tenant's evidence over the Landlord's because the Tenant's evidence was forthright, credible, and supported by text messages which clearly outline a chronological list of events and clearly show that the Tenant had been expecting the return of her deposits.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Based on the above, I find the Landlord's explanation that he had a contractor conduct repairs of the rental unit, on or before October 23, 2013, and that those repairs were the responsibly of the Tenant, or that he discussed the contractor's invoice during the move out inspection on October 28, 2013 to be improbable given the circumstances presented to me during the hearing and supported by the documentary evidence.

Furthermore, I find the Landlord's explanation that the Tenant refused to sign the move out inspection report form because she was mad, highly unlikely, as the trail of communication which followed was not that of someone who was upset. Rather, the communication and evidence supports the Tenant's submissions that the Landlord did not have the condition inspection report form with him at the time of the inspection, the Tenant did not sign the form agreeing that the Landlord could keep the deposit during the move out inspection; rather, that section of the form was signed at the start of the tenancy. I also accept that the Landlord told the Tenant to expect her security deposit and pet deposit to be returned in the mail.

The undisputed evidence was that the Landlord did not provide the Tenant with a written copy of the move out condition inspection report form until he sent a copy by e-mail on March 7, 2014.

Section 36(2)(c) of the Act stipulates that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

18 (1)(b) of the regulations stipulates that the landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

Regulation 18 (2) states the landlord must use a service method described in section 88 of the Act *[service of documents]*.

Based on the above I find the Landlord did not comply with section 36 of the Act and he did not comply with #18 of the regulations. Accordingly, I find the move out condition inspection report form to be invalid and of no force or effect.

This tenancy ended October 28, 2013, and the Tenant provided the Landlord with her forwarding address, in writing by registered mail, on November 29, 2013. The Landlord is deemed to have received the forwarding address on **December 4, 2013**, five days after it was mailed

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than December 4, 2013; he did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double her security and pet deposits plus interest in the amount of **$2,500.00** (2 x $625.00 + 2 x $625.00 + $0.00 interest).

The Tenant has succeeded with her application therefore I award recovery of the **$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **$2,550.00** ($2,500.00 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 30, 2014

Residential Tenancy Branch