



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the landlord filed June 16, 2016 pursuant to the *Residential Tenancy Act* (the Act) for damage to the unit and to retain the security deposit of \$335.00 in full satisfaction of their damage claim and to recover the filing fee.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and testimony in respect to the claim and to make relevant prior submissions of evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant acknowledged receiving the landlord's application and notice of hearing and their evidence in June 2016. The tenant testified they sent their evidence to the landlord on December 05, 2016 by express mail. **Section 90** of the Act deems mail to be received 5 days after it is mailed which in this matter is December 10, 2016. The landlord acknowledged receiving the mail the day before the hearing. The tenant was notified of the hearing 5 months earlier, but did not provide sufficient reason as to why the landlord could not have received it before the hearing as per the Rules of Procedure. The tenant's evidence was deemed inadmissible. None the less the tenant was permitted to provide their evidence orally as testimony. The hearing proceeded on the merits of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began May 01, 2012 and ended March 31, 2016. The landlord collected a security deposit of \$335.00 at the outset of the tenancy and still retains the full amount in trust. There was no *move in* or *move out* inspections conducted by the landlord in accordance with the Act. The landlord acknowledged receiving the tenant's written forwarding address on April 04, 2016.

The landlord claims the tenant left the unit unclean when they vacated and as a result the landlord incurred a cost of \$514.50 to clean the unit. The landlord provided a copy of the cleaning invoice as well as a copy of an incomplete condition inspection report which they claim was signed by a former staff in April 2016. The landlord also submitted a series of 10 photographs which they testified were taken the day after the tenant vacated. The tenant largely disputes the landlord's depiction of the unit at the end of the tenancy. The tenant was asked to provide testimony in respect to the landlord's evidence. The tenant agreed that 4 of the landlord's photos reasonably depicted the state of the unit at the end of the tenancy. The tenant agreed that a white door jamb had been left with water based children's paint marking the door jamb and below on the floor, however they questioned they left as much as depicted in the photograph. The tenant agreed with the condition of the oven as depicted in the landlord's photograph, however in their opinion the photograph appears it was left sufficiently clean. The tenant agreed with the landlord's photograph depicting a stain on the bathroom floor near a toilet bowl as unremoved nail polish. The tenant further agreed with the landlord's photograph depicting remnants of food inside a cupboard. The tenant disagreed with the balance of the landlord's evidence.

The tenant's witness' testimony was limited to confirming that the tenant provided their written forwarding address to the landlord shortly after the tenancy ended, as agreed by the landlord.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

The burden of proof in this matter lies with the applicant. On preponderance of the evidence and on the balance of probabilities I find as follows.

In respect to the landlord's application I find that despite the absence of a valid condition inspection report the tenant's agreement with portions of the landlord's photograph evidence is sufficient evidence the rental unit was left less than reasonably clean as

required by **Section 37** of the Act. I note that the landlord's cleaning invoice is considerably more than their claim; however the landlord confirmed solely seeking an amount equivalent to that of the security deposit. As a result, I find it reasonable to grant the landlord's application seeking the amount of \$335.00. The landlord is further entitled to recover their filing fee of \$100.00 for a total award of **\$435.00**.

1). Sections 24 and 36 of the Act in respect to the *move in* and *move out* condition inspection requirements of the Act state as follows.

Consequences for tenant and landlord if report requirements not met

- 24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

- 36** (2) Unless the tenant has abandoned the rental unit, 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
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) 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.

2). Section 38 of the Act in relevant parts provides as follows in respect to the administration of tenant deposits (**emphasis mine**).

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days** after the
later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) **file an application** for dispute resolution to make a claim against the security deposit or pet damage deposit.

and

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) **may not make a claim against the security deposit** or any pet damage deposit, and

38(6)(b) **must pay the tenant double** the amount of the security deposit, pet damage deposit, or both, as applicable.

In respect to the foregoing portions of the Act the evidence is that the landlord did not complete condition inspection reports in concert with the Act and their right to claim against the deposit were extinguished, and thus precluded from making a claim to retain the deposit for damage to the unit; and therefore obligated to simply return the deposit within the required time. It must be known that despite returning the deposit it remained available to the landlord to file an application for damages arising out of the tenancy, including damage to the unit, which in part the landlord has done by this application.

3). Residential Tenancy Policy Guideline #17, in relevant part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In concert with the foregoing and as a result of all the above, I find the tenant is entitled to double their security deposit in the amount of \$670.00 from which the landlord's award of \$435.00 is set off, for a monetary order to the tenant in the balance of **\$235.00**.

Conclusion

The landlord's application is granted.

The tenant is given a Monetary Order under Section 67 for the amount of **\$235.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: December 13, 2016

Residential Tenancy Branch