



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for monetary order for damages, for an order to retain the security deposit in partial full of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 17, 2020.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Further, the tenant has confirmed service as they file evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to keep the security deposit in full satisfaction of their claim?

Background and Evidence

The tenancy began on March 1, 2017. Rent in the amount of \$1,910.00 was payable on the first of each month. A security deposit of \$875.00 was paid by the tenant.

The landlord testified that they only made this application because the tenant sent them their forwarding address.

The landlord testified that a move-in condition inspection was done with the tenant. The landlord stated that the tenant failed to participate in the move-out condition inspection.

The landlord testified that between July 20 and July 27, 2020 they were trying to arrange an agreeable time to conduct the inspection; however, the tenant would not agree. The landlord stated that on July 30, 2020, they served the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection with a date of July 31, 2020 at 1:00pm. The landlord stated that the tenant left the premise and did not attend the inspection.

In the tenant's written submission filed in evidence they write the following.

"Did not want to arrange a move out meeting as the management was aggressive and frightened me. They broke a lot of rules and I tried to get tenant's insurance but was unable as they would not answer the questions that the insurance company wanted the answers to (about Electrical and plumbing and security).I did give proper notice however".

[Reproduces as written.]

[My Emphasis added.]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 35(1) of the Act states the landlord and tenant **must** inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit.

In this case, I find the tenant did not comply with the Act, as they failed to participate in the move-out condition inspection as required by the Act. Even after they were served with the Notice of Final Opportunity to Schedule a Condition Inspection with a date of July 31, 2020 at 1:00pm.

If the tenant felt the landlord was aggressive and was frightened, they could have had a friend attend with them or appoint an agent to act on their behalf, they cannot simply ignore the notice and not attend for the inspection.

Further, I have read the email correspondence between the two parties, there is nothing in those emails that shows the landlord was doing or acting inappropriately. Only attempting to arrange the initial inspection.

Based on the above, I find the tenant breached section 35 of the Act, when they failed to participate in the move-out condition inspection. Therefore, I find pursuant to section 36 of the Act the tenant has extinguished their rights to the return of the security deposit. **This means the landlord is entitled to keep it.**

As there was no need for the landlord to make their application as they were entitled to keep the security deposit under the Act, and they were simply offsetting the damage with the security deposit. I find I do not need to consider that issue as there would be no amount owing. Therefore, I decline to award the cost of the filing fee.

Conclusion

The landlord is authorized to keep the security deposit.

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 18, 2020

Residential Tenancy Branch