



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on February 15, 2020 and reverted to a month-to-month tenancy after February 14, 2021, which ultimately ended on December 31, 2021. Rent in the amount of \$1,600.00 was payable on the 15th day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00, and no pet damage deposit was collected. The rental unit is a condominium apartment and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that no move-in or move-out condition inspection reports were completed.

On January 12, 2022 the tenant provided the landlord with a forwarding address in writing by email, a copy of which has been provided for this hearing. On the same date, the landlord's agent replied that due to damages, the landlord will not be returning the deposit.

The tenant agreed that the landlord may keep \$100.00 because the tenant didn't provide a receipt for having the carpet cleaned at the end of the tenancy, which was a requirement under the tenancy agreement, but the tenant did not agree that the landlord may retain any other amount. The landlord has returned the total sum of \$230.60, but has not served the tenant with an Application for Dispute Resolution claiming any portion of the security deposit.

The landlord testified that deductions were made for cleaning, and the washer was repaired. Also, the tenancy agreement contains "Additional Terms," including a condition indicating that the landlord has the right to retain reasonable amount of the security deposit for damages made to the rental unit during the lease period, with an itemized written statement.

Analysis

Firstly, the *Residential Tenancy Act* states that tenancy agreements must not contain terms that are contrary to the law. I have reviewed the tenancy agreement and "Additional Terms," and I find there are several terms that are contrary to the law, including a late fee of \$100.00, plus \$20.00 for each additional day after 7 days that rent is late.

Further, a landlord may not include a term indicating that the landlord may keep any portion of the security deposit. The law states that a landlord must 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 for Dispute Resolution 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 deposit. Also, the law places the onus on the landlord to ensure that the move-in and move-out condition inspection reports are complete in accordance with the regulations, and if the landlord fails to do so, the landlord's right to make a claim against the security deposit for damages is extinguished, and I so find. Therefore, whether or not there are damages, the landlord, having not completed the reports, had 15 days to return the security deposit.

I am satisfied in the evidence that the tenancy ended on December 31, 2021 and the landlord received the tenant's forwarding address in writing on January 12, 2022. The landlord returned \$230.60, and the tenant agreed to a deduction of \$100.00 for carpet cleaning. Therefore, I find that the tenant is entitled to double the amount, less the \$100.00 agreed to by the tenant, and less the amount already returned, for a total of \$1,269.40 ($\$800.00 \times 2 = \$1,600.00 - \$100.00 - \$230.60 = \$1,269.40$).

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$1,369.40. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

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 \$1,369.40.

This order is final and binding and may be enforced.

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: November 15, 2022

Residential Tenancy Branch