



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing dealt with an application by the landlord/tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For an order requiring the landlord to return the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord JR and tenant JS with advocate SD appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord testified that he received the tenant's dispute notice and materials and based on his testimony I find the landlord served in accordance with sections 88 and 89 of the Act. The landlord submitted documentary evidence in response to the tenant's application but testified that the tenant was not served. Therefore, I will only consider the landlord's oral evidence in the hearing.

Issue(s) to be Decided

1. Is the tenant entitled to the return of the security deposit?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced April 1, 2013. Rent was \$1,095.00 per month. The tenant paid a security deposit of \$482.50 to the landlord which is still held by the landlord. The tenancy ended February 28, 2022.

The tenant stated that she participated in a move in inspection with the previous landlord but did not receive a move in condition inspection report. An inspection was not completed with this landlord. She further testified that she was not offered two opportunities by the landlord to do a move out inspection. She provided text messages she sent the landlord in evidence regarding the move out inspection:

- A text message dated March 3, 2022 from the tenant to the landlord stating that she had not heard from him since a discussion with him on March 1, 2022 where he said he would call to set up an inspection;
- A text message dated March 5, 2022 from the tenant asking the landlord to contact her to schedule a walkthrough on that day. She expressed concern about whether the text messages were being received;
- An undated text message from the tenant to the landlord asking to schedule a walk through that date.

The tenant stated that the landlord either did not respond or was unavailable for those times. On March 10, 2022 the tenant sent the landlord her forwarding address on the RTB 47 form. She sent it by registered mail. The tenant provided Canada Post tracking information in evidence showing that the registered letter was delivered on March 27, 2022.

The landlord testified that he purchased the rental property and took possession on October 1, 2021. He stated that he did not receive the tenant's forwarding address information. He testified that he offered the tenant two opportunities to do a move out inspection. He read from one text dated February 28, 2022 where he offered a walk through. He read from a further text message dated March 1, 2022 which he stated was a second offer of a walk through. He stated that the tenant did not respond.

Both parties agreed that the landlord still holds the entire security deposit. The landlord stated that he did not file an application for dispute resolution with a request to retain the security deposited. Both parties agreed that the tenant did not agree in writing to the landlord retaining a portion or all of the security deposit.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim, which in this case is the tenant.

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the “Regulations”). Further, section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the tenant about a move-in inspection and the fact that she did not receive the condition inspection report, I find the tenant did not extinguish her rights in relation to the security deposit pursuant to section 24 of the Act.

I find based on the evidence of both parties, including the text messages, that the tenant was not offered two opportunities to do a move-out inspection and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 36 of the Act. I accept the landlord’s evidence of the text messages. I find that the text message on March 1, 2022 sent by the landlord did not offer a specific date to do the move out inspection. In coming to that conclusion, I rely on the tenant’s text message in evidence from March 3, 2022 where she states that she has not heard from the landlord since a verbal conversation on March 1, 2022 whereby the landlord advised the tenant he would contact her about a move out inspection. Upon receiving the March 3, 2022 text from the tenant, the landlord could have offered another specific date for the inspection. I have no evidence before me to show that he offered another date.

Based on the undisputed testimony of the tenant about a move-in inspection and the lack of condition inspection report, I find the landlord extinguished his rights in relation to the security or pet damage deposits pursuant to section 24 of the Act.

Based on the testimony of the parties about a move-out inspection, I find the landlord did not provide the tenant two opportunities, to do a move-out inspection. I note that the landlord was in contact with the tenant by text as is clear from the evidence and therefore could have suggested a second date to do the inspection.

Section 36(2) of the Act states:

(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]...

I find the landlord extinguished his right to claim against the deposits for damage to the rental unit pursuant to section 36(2)(a) of the Act. I also find that the landlord did not make a claim to the security deposit by filing an application for dispute resolution. I find that the tenant did not agree in writing to allow the landlord to retain all or a portion of the security deposit.

Based on the undisputed testimony of the tenant, I find the tenancy ended February 28, 2022.

Based on the testimony of the tenant, and the supporting evidence that the tenant sent the landlord the forwarding address by registered mail which was claimed by the landlord on March 27, 2022, I find the tenant provided their forwarding address to the landlord by registered mail and it was received by the landlord on March 27, 2022.

Pursuant to section 38(1) of the Act, the landlord had 15 days from March 27, 2022, to repay the security deposit or file a claim against it. I find that the landlord did neither.

Therefore, I grant the tenant's application and find that she is entitled to the return of double the amount of the security deposit based on section 38(6) of the Act.

As the tenant was successful in her application, she is entitled to recover the \$100.00 filing fee for the application.

Conclusion

The tenant is granted a monetary order as follows:

Claim	Amount
Security Deposit (double)	\$965.00
Filing Fee	\$100.00
Total	\$1065.00

The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 12, 2023

Residential Tenancy Branch