



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE ROCKIES WEST
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the security deposit or pet damage deposit. The application was made by way of the Direct Request process, which was adjourned to this participatory hearing, and an Interim Decision was provided to the parties dated July 7, 2023.

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the parties agreed that all evidence has been exchanged. However, during the course of the hearing, one of the tenants indicated that a photograph provided by the landlord was not provided to the tenant. The landlord uploaded the photograph to the Residential Tenancy Branch site on October 5, 2023. Any evidence that a party wishes to rely on must be provided to the other party, and in the case of a respondent, that evidence must be provided to the tenants and to the website no less than 7 days prior to the hearing. Therefore, I find that the photograph should not be considered. No other issues respecting evidence were raised, and all other evidence of the parties has been reviewed and the evidence I find relevant to the application before me is considered in this Decision.

Also, at the commencement of the hearing one of the tenants advised that a hearing had been held wherein the landlord's application was dismissed without leave to reapply. I reviewed the Decision during the hearing, and advised the parties that it is important for me to know what has been ordered to prevent re-hearing or making a Decision respecting a matter that has already been adjudicated upon.

The Decision is dated October 26, 2021 which concerned an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep the security deposit; and to recover the filing fee from the tenants. The Decision states that the landlord's request to adjourn the hearing was denied, and that the landlord failed to "provide the fundamental monetary details of her application," and the landlord's application was dismissed without leave to reapply.

During cross examination the landlord asked one of the tenants, "May I have a copy of the move-out video?" I found that to not be cross examination, and re-phrased the question to, "Did you provide a copy of the move-out video to the landlord?" The tenant became very irate that I would "advocate" for the landlord, and the question was not answered by the tenant.

Issue(s) to be Decided

Have the tenants 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 first tenant (BH) testified that this fixed-term tenancy began on April 1, 2020 and expired on March 31, 2021. The tenants vacated the rental unit on April 4, 2021. Rent in the amount of \$1,750.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$875.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite within a duplex, and a copy of the tenancy agreement has been provided by the tenants for this hearing.

The tenant further testified that on March 26, 2021 the tenants provided a forwarding address to the landlord by email, as well as by registered mail, but does not recall the date.

The landlord did not schedule a move-out condition inspection with the tenants, and it was hard to get ahold of the landlord for anything.

The landlord gave the tenants a Two Month Notice to End Tenancy For Landlord's Use of Property effective March 31, 2021 and the tenants moved out in accordance with the Notice, but stayed a few days longer.

The second tenant (JA) testified that on April 4, 2021 the tenants left the keys and a letter on the counter which contained the tenants' forwarding address. The tenants also provided the landlord with a forwarding address in an email on March 26, 2021.

The landlord did not schedule the move-out condition inspection with the tenants.

The tenants weren't able to get a U-Haul so took a few extra days to move out.

The landlord testified that the tenants were given many opportunities to schedule the move-out condition inspection by text, email and by the Property Manager verbally. The landlord left it to the Property Manager to schedule the move-out condition inspection but does not have a copy of a Final Opportunity to Schedule the inspection.

The cost of repairs far exceeded the security deposit, and the landlord was hoping that the tenants would do the right thing so that the landlord could recover some loss.

The landlord did not know that the previous Decision meant that the landlord had to return the security deposit to the tenants.

Analysis

The landlord's application seeking to keep the security deposit for unpaid rent or utilities and damages was dismissed without leave to reapply.

The *Residential Tenancy Act* states that a landlord must return a security deposit in full or make an application to keep it 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. If the landlord fails to do either, the landlord must repay double the amount of the security deposit.

In this case, the landlord applied to keep the security deposit but was not successful in obtaining that order. Therefore, the landlord only had 1 choice, and that was to return the security deposit to the tenants. The landlord did not do so, and therefore, I find that the tenants are entitled to double the amount, or \$1,750.00. Therefore I grant a monetary order in favour of the tenants in that amount.

The Supreme Court of British Columbia has ruled that monetary compensation due to a tenant should not be held against a property management company. Therefore, I grant the monetary order as against the landlord alone.

The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord (JS) pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,750.00.

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: October 06, 2023

Residential Tenancy Branch