



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC MNSD FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double their security deposit; for compensation for money owed or damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement; and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy; to the equivalent of double the monthly rent due under the tenancy agreement pursuant to section 51 of the *Act*; and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy ended on August 31, 2008; that the Tenant provided a forwarding address in writing on September 04, 2008; that the Tenant paid monthly rent of \$1,400.00; that the Tenant paid a security deposit of \$700.00 on May 23, 2008; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The female Landlord stated that they were having ongoing discussions with the Tenant regarding a portion of the security deposit, but that the Tenant did not agree to the deductions proposed by the Landlord. The Tenant stated that the Landlord agreed to return the full security deposit on November 10, 2008, but the Tenant refused to accept the payment.

The Landlord and the Tenant agree that this tenancy ended because the Landlord advised the Tenant that family members intend to occupy the rental unit. The parties agree that the Tenant was not served with a Notice to End Tenancy pursuant to section 49 of the *Act*, but the Landlord did ask the Tenant to sign a document which stated, in part, that the tenants "agreed to move out from the household before September 01, 2008 having been given a two month notice by the landlady". The document, which was submitted in evidence, also stated "We understand that the landlady requires the whole house due to the impending move-in of her family". The parties agree that the Tenant was not required to pay rent for August of 2008.

At the hearing the Landlord acknowledged that she was untruthful when she told the Tenant that a family member was going to occupy the rental unit. She stated that she

wanted to end the tenancy because she did not feel comfortable sharing the residential complex with the Tenant, for a variety of reasons that are not relevant to this dispute. She stated that the rental unit is currently occupied by a person who is not a family member.

Analysis

The evidence establishes that the Tenant paid a security deposit of \$700.00 on March 23, 2008; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not have lawful authority to retain any portion of it.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord did not repay the security deposit or file an Application for Dispute Resolution within the legislated time period.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus interest on the original amount, which in these circumstances is \$1,406.40.

Although the Landlord did not comply with the *Act* when she did not serve the Tenant with a proper Notice to End Tenancy pursuant to section 49 of the *Act*. I find that the Landlord's actions effectively ended this tenancy pursuant to section 49 of the *Act*. I

find that the Landlord benefited from the provisions of section 49 of the *Act* and that the Tenant should, therefore, benefit from the provisions of section 51 of the *Act*.

Section 51(2)(a) of the Residential Tenancy Act stipulates that the landlord must pay the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice. The evidence shows that the Landlord did not have a family member move into the rental unit, as she purported when she ended this tenancy.

In these particular circumstances, I award the Tenant compensation under section 67 of the *Act*, rather than section 51(2)(a) of the *Act*. Section 67 stipulates that a party may be ordered to compensate another party when the second party suffers damage or loss because the first party failed to comply with the *Act*. I have relied on section 51(2)(a) of the *Act* as a guideline in determining that the Landlord must pay the Tenant the equivalent of two-months rent for ending this tenancy, which is \$2,800.00. This is the amount that the Landlord would have had to pay the Tenant if she had complied with the *Act* when she attempted to end this tenancy pursuant to section 49 of the *Act*. I am satisfied that a monetary Order is the appropriate resolution to this aspect of the dispute, as a Landlord can not end a tenancy and then benefit from failing to end that tenancy in accordance with the *Act*.

Conclusion

I find that the Tenant has established a monetary claim of \$4,256.40, which is comprised of double the security deposit, plus interest on the original amount; compensation pursuant to section 51(2)(a) of the *Act*; and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with

this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: January 12, 2009.
