



Dispute Resolution Services

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

DECISION

Dispute Codes: MNR, MNSD, MNDC and FF

Introduction

This matter was originally set to be heard on February 5, 2009 but was adjourned at the request of legal counsel for the tenant who, having been served late, was out of town at the time. In addition, legal counsel for the tenant was granted a Summons to Testify for one witness.

The applications were brought by both the landlord and the tenant.

By application received December 10, 2008, the landlord sought a Monetary Order for loss of rent, damages and recovery of the filing fee for this proceeding.

By application received January 2, 2009, the tenant sought return of his security deposit in double and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the landlord's mother who appeared on her behalf requested that the hearing be adjourned for a second time on the grounds that her daughter was hospitalized with a nervous breakdown.

I denied an adjournment for the following reasons:

1. The landlord or her agent had not made a written request for an adjournment pursuant to Rule of Procedure 6.2 a) three days in advance and the tenant had no advice of the request until the hearing. The landlord was familiar with that procedure as the tenant's legal counsel had followed it in requesting the first adjournment;
2. The landlord or her agent provided no documentary evidence to substantiate the landlord's hospitalization;
3. The tenant's legal counsel did not consent to an adjournment;
4. The landlord did not provide the tenant with her evidence as promised at the initial sitting of this hearing;
5. The landlord had ample opportunity to fully brief her agent;
6. A former employee of the strata building had been issued with a summons to appear. I found her to be a neutral party whose evidence was highly reliable, uncontested by the tenant's mother and pertained to facts pivotal to the dispute in question. I found insufficient justification to impose a further appearance on that witness;
7. The matters in dispute were straightforward and not subject to nuance or multiple interpretation of a nature that the landlord herself might have addressed any more effectively than her mother, despite her mother's submission that she had little knowledge of the matters in question. Therefore, I found that proceeding with the hearing did not prejudice the landlord.

Background and Evidence

This tenancy began on or about July 1, 2008 and ended on November 25, 2008. The tenant moved out pursuant to an Order of Possession issued on November 12, 2008 after a hearing on October 12, 2008 on the tenant's application to set aside a Notice to End Tenancy for repeated late payment of rent. Rent was \$900 per month and the landlord holds a security deposit of \$460.

In the present application, the landlord sought loss of rent for December 2008 and January 2009, \$100 for replacement of locks, \$100 move out fee charged by the strata corporation and \$500 awarded to the tenant in a previous hearing on August 21, 2008.

During the hearing, the strata corporation employee gave evidence that the corporation had stopped charging move out fees at the time this tenancy ended and that the landlord was not charged with such a fee. Therefore, that part of the landlord's claim is dismissed without further consideration.

She gave further evidence that the landlord's daughter had moved in to the rental unit on December 13, 2008. The landlord's mother concurred and stated that she herself had paid for the change of locks in the last week of December. She stated that the landlord had been concerned that she had not received the keys and wished the locks changed, a matter contested by the tenant.

While the landlord had not requested authorization to retain the security deposit, the tenant agreed that he would be content to receive return of his bare security deposit with interest rather than double the security deposit as required under section 38(6) of the *Act*.

Therefore, given that that the landlord made application with 15 days as required by section 38 of the Act, as permitted under section 64(3) of the Act, I allowed the her application to be amended to request authorization to retain the deposit.

Analysis

As noted, the landlord's request for reimbursement of \$100 for the move out fee is dismissed as it was not required or paid.

The request for payment of \$100 for replacement of locks is dismissed as there was a new tenant in the rental unit, the landlord's daughter, and section 25 of the Act requires a landlord to replace locks at the beginning of a new tenancy if the tenant so requests. Therefore, that part of the claim is dismissed.

The landlord's request for return of the \$500 awarded at the hearing of August 21, 2008 is dismissed as *Res Judicata*, a matter previously heard and dealt with that I cannot adjudicate again.

The landlord requested an award for loss of rent for December 2008 and January 2009. However, the strata corporation employee and the tenant's mother gave evidence that the landlord's daughter had moved in to the rental unit on December 13, 2008. Notwithstanding the landlord's mother's statement that that arrangement was made simply to keep the unit safely occupied, I find that the unit was not available for rent and the tenant cannot be held responsible for loss of rent. In addition, given that the unit was in an apartment building, it is questionable as to whether it needed to be occupied to ensure its security.

Moreover, section 7 of the *Act* which permits landlords or tenants to recover losses due to a breach by the other of the legislation or the rental agreement, also imposes a duty on the party making claim to do whatever is reasonable to minimize their loss.

Though the landlord was aware that the unit would be vacated when she was awarded an Order of Possession on November 12, 2008, she has provided no evidence to prove that she attempted to advertise to gain new tenants. Therefore, the application for loss of rent is dismissed. As all claims have failed, the landlord's application is dismissed without leave to reapply.

As to the tenant's application, as section 38(6) of the *Act* would not apply and the tenant would not qualify for return of the deposit in double, I find that the tenant is entitled to return of his full security deposit, plus interest plus recovery of the filing fee for this proceeding as follows:

Return of security deposit	\$460.00
Interest (July 1, 2008 to date)	3.47
Filing fee	50.00
TOTAL	\$513.47

Thus, the tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$513.47 for service on the landlord.

March 26, 2009.

Dispute Resolution Officer