Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; the return of her security deposit; 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 compensation for payments made for screens, cleaning, and rent payments; to the return of her security deposit; and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenant agree that their tenancy agreement required the Tenant to pay monthly rent of $1,100.00 on the first day of each month.

The Agent for the Landlord and the Tenant agree that the Tenant moved in on March 28, 2008. The Tenant stated that when she arrived on March 28, 2009 the previous tenant had not vacated and that she had to wait until approximately 1800 hours until she could move into the rental unit.

The Agent for the Landlord and the Tenant agree that the Tenant paid pro-rated rent for that month, in the amount of $106.45. The Agent for the Landlord stated that the Tenant asked to move into the rental unit early and was advised that she would be required to pay three days of rent directly to the person who was occupying the rental unit at that time if she moved in early. He stated that he spoke with the person occupying the rental unit on March 28, 2008 and was advised that the Tenant had not yet paid her the pro-rated rent. He stated that he spoke with the Tenant, who stated

that she did not have access to her cheque book, as it was packed with her belongings. He stated that they agreed he would pay the pro-rated rent to the then-occupant on behalf of the Tenant and the Tenant agreed that she would reimburse him at a later date. He stated that he did pay $106.45 to the occupant and was subsequently reimbursed by the Tenant.

The Tenant stated that there had been no discussion about the pro-rated rent of $106.45 until after she moved into the rental unit, although she agreed that she did borrow the money from the Landlord for the purposes of paying the person occupying the rental unit at that time.

The Landlord submitted evidence to show that the former occupant was paying monthly rent of $1,070.00, which is $35.17 per day over a 365 day period. The Tenant was required to pay rent for three days in March, which by my calculations should have been $105.51.

The Agent for the Landlord and the Tenant agree that the Tenant paid a security deposit of $550.00 on, or about, April 01, 2008; that the Tenant vacated the rental unit on February 18, 2009; that tenancy was scheduled to end on February 28, 2009; that the Tenant provided the Landlord with her forwarding address, in writing, on February 26, 2009; and that the Landlord returned $459.25 of the security deposit on April 15, 2009.

The Agent for the Landlord and the Tenant agree that a condition inspect report was completed at the end of the tenancy, a copy of which has not been submitted in evidence. The Agent for the Landlord stated that the report provided the Landlord written authorization to withhold $90.75 from the security deposit as compensation for cleaning the carpet. The Tenant stated that she was not given a copy of the condition inspection report and she denies giving the Landlord written authority to keep any portion of her security deposit.

The Tenant is seeking compensation, in the amount of $392.85, for rent that she paid between February 18, 2009 and February 28, 2009, as she did not occupy the rental unit during that period. The Tenant stated that she was not required to vacate the rental unit prior to February 28, 2009 and that she had no agreement with the Landlord that she would be compensated for vacating early.

The Tenant is seeking compensation, in the amount of $115.00, for window/door screens for the rental unit. The Agent for the Landlord stated that the previous occupant of the rental unit had purchased screens for the rental unit shortly before the end of her tenancy. He stated that the Tenant was asked if she would like to purchase these screens from the previous occupant for $115.00. He stated that the Tenant agreed to purchase the screens and that she agreed he would pay the former occupant

$115.00 for the screens and that the Tenant would reimburse him. He stated that the screens do not belong to the Landlord and they will be returned to the Tenant at her request.

The Tenant stated that she agreed to purchase the screens from the former occupant because she did not believe she had the option of declining; that she did not really want the screens at the time; and that she does not want the screens now.

Analysis

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

After hearing the conflicting evidence of both parties regarding the pro-rated rent for March, I find that there was an agreement to pay pro-rated rent for March of 2008. I favoured the evidence of the Agent for the Landlord over the evidence of the Tenant in this matter largely because it is more reasonable to believe that a tenant who is leaving a rental unit early to accommodate another tenant moving in would receive compensation for vacating early.

In the circumstances before me, I find the version of events provided by the Landlord to be more credible. In reaching this conclusion, I was strongly influenced by Tenant's evidence that the former occupant was not prepared to vacate by the time the Tenant arrived with her belongings and that she expedited her departure because the Tenant was waiting with her belongings. Had there not been an agreement to compensate the former occupant for vacating early, I find it unlikely that the former occupant would have hurried to vacate the rental unit. On this basis, I find that the Tenant was required to pay pro-rated rent for March of 2008, and I dismiss her application for the return of all of the rent she paid.

The evidence shows that the Tenant paid pro-rated rent for March of $106.45, which was paid directly to the former occupant. The former occupant was paying monthly rent of $1,070.00, which is $35.17 per day over a 365 day period. The Tenant was

required to pay for three days in March, which by my calculations is $105.51. I therefore find that the Tenant overpaid her rent for March by $0.94. I find that she is entitled to the return of this overpayment.

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, the Landlord did not file an Application for Dispute Resolution seeking to keep any portion of the security deposit and it did not return any portion of the security deposit until April 15, 2009. As this tenancy lawfully ended on February 28, 2009 and the Tenant provided her forwarding address in writing on February 26, 2009, the security deposit should have been returned on, or before, March 15, 2009. I find that the Landlord failed to comply with section 38(1), as it did not file an Application for Dispute Resolution and it did not repay any portion of the security deposit until April 15, 2009, which is 46 days after the end of the tenancy.

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 550.00, pursuant to section 38(6) of the *Act*.

After hearing the conflicting evidence of both parties regarding authorization to retain a portion of the security deposit, I find that the Landlord has failed to establish that it had written authorization to keep any portion of the deposit. In circumstances where the Tenant denies giving written authorization, the burden of proving that authorization exists rests with the Landlord. In these circumstances, the Landlord has submitted insufficient evidence to establish that they had written authority to retain $90.75 of the security deposit. In reaching this conclusion, I was strongly influenced by the absence of the written document in which the alleged authorization was given. As the Landlord has not established that it had written authority to retain $90.75 from the security deposit, I find that this amount must be returned to the Tenant.

I find that the security deposit has accrued interest in the amount of $6.20. I find that this amount must be returned to the Tenant, pursuant to section 38(1) of the *Act.*

I find that the Tenant has not established that she is entitled to compensation in any amount for vacating the rental unit early, as she was not required to vacate the rental unit prior to February 28, 2009 and she had no agreement with the Landlord that she would be compensated for vacating early. On this basis I dismiss her claim for compensation for any portion of the rent she paid for February of 2009.

I dismiss the Tenant's claim for compensation for the purchase of the window/door screens, as I find that I do not have jurisdiction in this specific matter. The evidence shows that these screens were purchased from the former occupant and not the Landlord and, as such, are not a transaction over which I have jurisdiction.

Conclusion

I find that the Tenant has established a monetary claim of $697.89, which is comprised $550.00 in compensation for failing to comply with section 38 of the *Act*, $90.75 that was unlawfully retained from the security deposit, $6.20 in interest on the original amount of the security deposit, $0.94 for a rent overpayment from March of 2008; 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.

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: July 31, 2009.

Dispute Resolution Officer