



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNDC & MNSD

Introduction

This hearing dealt with an application by the tenant seeking the return of double her security deposit plus interest and compensation for the loss of a service or facility. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the tenant entitled to the return of double her security deposit plus interest?

Is the tenant entitled to compensation due to the loss of use of her parking space during the course of her tenancy?

Background and Evidence

This tenancy began on March 1, 2008 for the monthly rent of \$850.00 and a security deposit of \$425.00. The tenancy ended effective May 31, 2009. The parties agreed that no written move-in or move-out condition inspection reports were completed as required by the *Act*. The landlord also agreed that a forwarding address was provided on May 31, 2009 and that the landlord only returned \$150.00 of the tenant's security deposit plus interest on June 11, 2009.

Although a copy of the tenancy agreement was not provided to the tenant during the tenancy and not provided by the landlord for this proceeding, I accept the oral testimony at a rental unit in this building usually includes a parking spot in the rent. The tenant stated that although she did not have a vehicle when she asked to use the parking space for her father to park, the landlord denied the use of this space. The tenant's testimony was vague as to why she was not permitted to use the parking spot or why her father did not use the parking spot from the beginning.

The landlord stated that he never received a request to have the tenant's father use the parking spot assigned to the rental unit. He indicated that the tenant's father was parking in an unauthorized area and after being requested to move his vehicle he parked on the street.

Analysis

The tenant's application is granted in part. I am satisfied, and the landlord conceded that the requirements of section 38 of the *Act* were not met. Further, I am satisfied that the landlord had no right to retain any portion of the tenant's security deposit because the landlord failed to completed written move-in and move-out condition inspections as required by sections 23, 24, 35, and 36.

Section 38(6) of the *Act* states that if a landlord's fails to return a tenant's security deposit or file an application to keep a tenant's security deposit within 15 days of the end of the tenancy than the landlord must return the tenant double the security deposit.

I am not satisfied however that the tenant should be compensated for the loss of use of a parking spot. Although I accept that a parking spot can be offered with the rental of a unit, I find that the tenant did not require or request the use of the parking spot since she did not have a vehicle.

In addition, I find that although neither party could clearly recall dates, I accept that the tenant's father was not asked to stop parking in the parking lot until around March or April 2009 just prior to the end of this tenancy. I accept that the tenant did not make any attempt to request the use of the parking spot until this time and prior to that her father was parking wherever he could find an available spot.

The tenant was required to provide the landlord with written notice of the breach or loss of use of the service or facility and provide the landlord with a reasonable amount of time to correct the breach. I accept the evidence of the landlord that the tenant never requested the use of the parking spot. I find that the tenant has suffered no loss and I deny her claim for compensation due to the loss of use of a parking spot.

I find that the tenant has established a total monetary claim for the sum of \$705.33 comprised of double her security deposit plus accumulated interest of \$5.33 less the \$150.00 previously returned to her.

I grant the tenant a monetary Order for the sum of **\$705.33**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

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*.

The tenant's application was granted in part. The tenant has received a monetary Order due to the landlord's failure to return her security deposit plus interest in accordance with section 38 of the *Act*.

Dated: August 10, 2009.

Dispute Resolution Officer