



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement, for the return of her security deposit and to recover the filing fee for this proceeding. At the beginning of the hearing, the Tenant confirmed that she was abandoning her application for repairs to the rental unit.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of her security deposit?

Background and Evidence

This tenancy started on April 1, 2003 and ended on November 4, 2009 when the Tenant moved out. Rent was \$2,028.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$975.00 on March 14, 2009.

On September 28, 2009, the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property which was to take effect on November 30, 2009. Neither party provided a copy of the Notice as evidence at the hearing, however they agree that the Landlord did not indicate on the 2nd page of the Notice what the reason was for ending the tenancy. The Tenant applied to set the Notice aside but later withdrew that application and gave the Landlord a letter dated October 18, 2009 advising him that she would be moving out on November 4, 2009.

The Tenant's letter dated October 18, 2009 also included the Tenant's forwarding address. The Tenant said she has not received her security deposit back from the Landlord and did not give him written authorization to keep it.

The Tenant also sought compensation for the Landlord's failure to communicate with her during the tenancy and to repair a dryer. The Tenant said the Landlord failed to provide her with a correct address and as a result, correspondence sent to him by registered mail was returned on 4 separate occasions. The Tenant claimed that the correspondence regarded a previous dispute resolution hearing and a request that the

Residential Tenancy Branch
Ministry of Housing and Social Development

Landlord make repairs. The Tenant also claimed that she advised the Landlord in September 2009 that her dryer wasn't working and that due to its age, it could not be repaired. The Tenant said a few weeks later the Landlord gave her the 2 Month Notice and confirmed that the dryer was not working. The Tenant also said that the Landlord did not attempt to replace the dryer until the end of October 2009. The Tenant claimed that the dryer only worked intermittently for the 2 months prior to September 2009.

The Landlord claimed that he ordered a new dryer as soon as the Tenant told him it was not working but that he did not receive it until the end of October 2009. The Landlord said he did not object to paying the Tenant \$100.00 for her inconvenience but argued that the amount sought by the Tenant was excessive.

Analysis

Section 49(7) of the Act says that a 2 Month Notice to End Tenancy must comply with s. 52 of the Act. Section 52 of the Act says that in order for a Notice to End Tenancy given by a Landlord to be enforceable, it must be in the approved form and state the grounds for ending the tenancy. In the absence of a copy of the 2 Month Notice to End Tenancy, I cannot determine if it was in the approved form or met the other requirements of s. 52 of the Act. Consequently, I find that there is insufficient evidence to conclude that the 2 Month Notice served on the Tenant on September 28, 2009 was an enforceable Notice and as a result, the Tenant's application for one month's compensation under s. 51 of the Act is dismissed.

Section 38 of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. I find that the Tenant gave her forwarding address in writing to the Landlord on or about October 18, 2009 but the tenancy did not end until November 4, 2009. Consequently, I find that the Tenant's application for the return of her security deposit is premature because 15 days have not elapsed since the end of the tenancy. As a result, the Tenant's application for the return of her security deposit is dismissed with leave to reapply.

Section 27 of the Act says that a Landlord must not terminate a service or facility unless he reduces the rent by an amount that is equivalent to the reduction in the value of the tenancy due to the termination of the facility. I find that the dryer was included in the Tenant's rent and that she lost the use of it for part of July and August and for all of September and October 2009. Consequently, I find that the Tenant is entitled to compensation of \$50.00 for each of July and August and \$100.00 for each of September and October 2009 for a total of \$300.00.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

I find that there is no basis under the Act or the tenancy agreement for requiring the Landlord to communicate with the Tenant in a reasonable manner. While it was a source of great frustration for the Tenant, it is not a reason on its own to award her compensation.

The Landlord disputed that he should be responsible for payment of the filing fee for this proceeding as he claimed that the Tenant withdrew her application to dispute the 2 Month Notice. As the Tenant has been successful on one of her claims in this matter, however, I award her one-half of her filing fee or \$25.00.

Conclusion

The Tenant's application for one month's compensation under s. 51 of the Act is dismissed. The Tenant's application for the return of her security deposit is dismissed with leave to reapply. A monetary order in the amount of **\$325.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: November 17, 2009.

Dispute Resolution Officer