

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit, for a refund of two weeks rent, and to recover the cost of the filing fee from the Landlord for this application.

Both the Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts provided in the testimony are: the month to month tenancy began on April 1, 2007 and ended when the Tenant vacated the rental unit sometime before the end of April 2009. The Tenant paid the rent in full up to April 30, 2009. The rent was payable on the first of each month in the amount of \$1,150.00 and the Tenant paid a security deposit of \$550.00 on April 1, 2007. A move-in inspection report was completed however a move-out inspection report form was not completed.

The Tenant testified that she provided the Landlord with verbal notice on April 2, 2009 that she would be ending the tenancy on April 30, 2009. The Tenant argued that she had to move out because there was damage to the rental unit after a water leak that the

Landlord refused to fix. The Tenant stated that she moved her possessions out on April 14, 2009 and returned the rental unit keys to the Landlord on April 18, 2009.

The Landlord confirmed that the Tenant moved out of the rental unit prior to April 30, 2009 however the Landlord did not know the exact date.

The Tenant testified that she provided the Landlord with her forwarding address in writing on June 25, 2009 in a letter where the Tenant requested the return of her security deposit.

The Landlord confirmed receipt of the Tenant's June 25, 2009 letter via mail and she informed the Tenant that she would not be refunding the Tenant's security deposit until the Landlord was able to re-rent the unit.

The Landlord argued that the damage caused to the rental unit was a result of the Tenant's actions of removing a lattice which allowed water to leak into the rental unit.

The Landlord testified that she does not have the Tenant's written permission to keep the security deposit nor does the Landlord applied to the *Residential Tenancy Branch* to obtain an Order allowing the Landlord to retain the deposit.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant's right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In this case the testimony supports that the tenancy ended April 30, 2009, the Tenant provided the Landlord with her forwarding address in writing on June 25, 2009, and the Landlord does not have an Order or the written permission of the Tenant to retain the security deposit.

I do not accept the Landlord's argument that the Landlord's violation was somehow excused due to the Tenant's alleged failure to comply with the *Act* or agreement. Even if the Tenant was found to be in violation of the *Act*, there is no provision in the *Act* that extends immunity for a reciprocal breach on the part of a Landlord.

I find that the Tenant has proven that she provided the Landlord with written notification of her forwarding address in the letter sent registered mail to the Landlord on June 25, 2009, and that the Landlord was deemed to have received this letter five days after it was sent, June 30, 2009, in accordance with section 90 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit or file for dispute resolution no later than July 15, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit and interest.

With respect to the Tenant's request for a refund of two weeks rent in the amount of \$575.00, there is no evidence before me to support that the Landlord has contravened the *Act* by accepting the full rent for April 2009. Based on the aforementioned, I find that the Tenant has failed to prove the test for damage or loss as listed above and I hereby dismiss her claim for \$575.00, without leave to reapply.

I find that the Tenant has partially succeeded with her application and that she is entitled to recover the cost of the filing fee from the Landlord.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Doubled Security Deposit 2 x \$550.00	\$1,100.00
Interest owed on the Security Deposit of \$550.00 from April 1, 2007 to November 9, 2009	14.56
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$1,164.56

In regards to the Landlord's claims relating to damage or loss that she may have suffered, I am not able to hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlord is at liberty to make their claims in a separate application.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize herself with her rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$1,164.56. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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 09, 2009.

Dispute Resolution Officer