



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, (MNSD)

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement. The Tenant did not tick off the box on his application to have his security deposit returned to him, however in written submissions accompanying his application, the Tenant stated that he wanted his security deposit returned to him. I find that the Landlord has had reasonable notice of this part of the Tenant's claim and as a result, the Tenant's application is amended to include a claim for the return of the Tenant's security deposit.

The Tenant said he served the Landlord with the Application and Notice of Hearing in person on August 12, 2009. Based on the Tenant's evidence, I find that the Landlord was served as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

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 his security deposit?

Background and Evidence

This month to month tenancy started on April 27, 2009 and ended on August 31, 2009 when the Tenant moved out. Rent was \$425.00 per month. The Tenant paid a security deposit of \$212.50 at the beginning of the tenancy.

The Tenant claimed that at the end of May 2009 he advised the Landlord (who is an agent of the owner) that the neighbouring tenants were making a lot of noise. In particular, the Tenant claimed that there was frequently the sound of loud music with heavy bass banging off of his wall. The Tenant also claimed that there were drunks on the neighbour's deck fighting on occasion. The Tenant said he called the police on two occasions and they came on one occasion, however there was little they could do to prevent the ongoing noise problem.

The Tenant said that the Landlord advised him that he would give the neighbouring tenants a notice to end tenancy at the end of June 2009 but later claimed he forgot and would do so at the end of July 2009 but never did so. The Tenant also said that he told

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the Landlord that the carpet in the rental unit was stained and smelled of cat urine but nothing was done until the end of July 2009 when the Landlord gave the Tenant only a few hours notice that he could have a carpet cleaner do the carpet. The Tenant said he did not have an opportunity to move the furniture off of the carpeted area and asked the Landlord to give him more notice but the Landlord did not approach him again about cleaning the carpets.

The Tenant said he got fed up with the Landlord taking no steps to deal with the noise and carpets and decided to move out. The Tenant said he has not received his security deposit back.

Analysis

Section 1 of the Act defines a Landlord (in part) as an owner's agent or another person, who on behalf of the Landlord exercises powers and performs duties under the Act or tenancy agreement. As the Landlord collected rent and had the authority to issue Notices to End Tenancy under the Act, I find that he is properly named as a Landlord in this matter.

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including but not limited to freedom from unreasonable disturbance. Section 7(1) of the Act says that if a landlord does not comply with the Act, he must compensate the Tenant for any loss that results.

I find that the Landlord breached the Act (and a material term of a tenancy agreement) in failing to deal with the noise complaints of the Tenant. In particular, I find that the Landlord failed to take reasonable or any steps to deal with the neighbouring tenants' noise and as a result, I find that the Tenant is entitled to compensation for a loss of quiet enjoyment equivalent to 1/3 of his rent or \$140.00 per month for the months of June, July and August 2009 for a total of \$420.00.

Section 32 of the Act states that a Landlord is responsible for maintaining residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that make it suitable for occupation by a tenant. RTB Policy Guideline #1 states a Landlord is expected to provide the tenant with clean carpets in a reasonable state of repair at the beginning of the tenancy. Based on the evidence of the Tenant, I find that the carpets were not clean at the beginning of the tenancy. However, I also find that the Tenant did not bring this issue to the Landlord's attention until the end of July 2009. I further find that although the Landlord offered to clean the Tenant's carpets that day, he did not provide adequate notice as required by s. 29 of the Act. Consequently, I find that the Tenant is entitled to compensation for one

month for having to deal with the nuisance of soiled and smelly carpets and as a result, I award him \$25.00.

Section 38(1) 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. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on August 31, 2009 but that the Tenant did not provide the Landlord with his forwarding address in writing. Consequently, I find that s. 38(6) of the Act does not apply, however, I order the Landlord to return the Tenant's security deposit in the amount of \$212.50 to him.

Conclusion

A monetary order in the amount of **\$657.50** 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: December 03, 2009.

Dispute Resolution Officer