



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order for compensation for damage or loss and return of double the amount of her security deposit.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary Order for compensation for damage or loss; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Preliminary Issue

The landlord submitted a written summary of events as evidence; however, this evidence was received by the Residential Tenancy Branch 3 days prior to this hearing outside of the 5 clear days before the hearing. I have not considered this document in this decision.

Background and Evidence

The tenant submitted the following documents into evidence:

- A 4 page summary of events and evidence;
- A copy of a letter of reference from a previous landlord;
- A copy of a tenancy agreement signed by both parties on September 11, 2007 for a 1 year fixed term tenancy beginning on October 1, 2007 with a monthly rent of \$800.00 due on the 1st of the month with a security deposit of \$400.00 paid on September 11, 2007;
- A copy of a letter of welcome from the landlord to the tenant dated September 11, 2007;
- A copy of a bill for moving expenses listed as from the tenants previous address to the dispute address in the amount of \$475.00;
- A copy of a payment receipt for the security deposit;
- A witness statement from a friend of the tenant;
- A copy of a letter regarding Online payments from the landlord dated September 11, 2007;

- A copy of the tenant's pre-authorized payment application; and
- A copy of the envelope addressed to the tenant with the returned security deposit stating the deposit was received on October 25, 2007.

The tenant testified that she received the returned security deposit on October 25, 2007. The tenant stated that the landlord had her next of kin address on documents submitted to them, prior to the end of the tenancy. She further testified that her next of kin had been contacted by the landlord in the first or second week of October, 2007 and they were provided with the forwarding address.

The landlord's agents testified that this was not likely to have been done as they do not generally track former tenants down to obtain a forwarding address. The tenant could not specifically identify when or how the landlord obtained her forwarding address.

The landlord's agent testified that the rental unit had been viewed by the tenant and a tenancy agreement was signed on September 11, 2007. The landlord's agent stated that after the agreement had been signed the tenant called on a daily basis to request early access to the rental unit. Each time the tenant was told it would not be possible.

The landlord's agents testified that the tenant came to the office on September 20, 2007 and became agitated and began crying when she was told she could not occupy the rental unit early. The administration then decided that they would no longer accept the tenant as an occupant. The agent testified she called the tenant that day and advised her of the decision.

The tenant testified that she had asked to have access to the rental unit early, as she had no need to do and that she showed up with a moving van on October 1, 2007 only to be told that they had rented her rental unit to another tenant.

The landlord's agent further testified that the staff in the rental office felt threatened by the tenant and that the landlord, as an employer, has a responsibility to protect staff from threats of violence in the workplace according to Worksafe BC requirements. The tenant contends that she was not in any way threatening to staff.

The landlord's agent offered to settle the matter for the equivalent of doubling the amount of the security deposit or \$400.00 in addition to the returned security deposit. The tenant declined the offer.

Analysis

Section 38 of the *Act* states a landlord must within 15 days of the end of the tenancy and the date the landlord receives the tenant's forwarding address either repay the security deposit or make an application for dispute resolution, claiming against the security deposit.

Neither the tenant nor the landlord provided testimony or evidence confirming when or how the forwarding address was provided to the landlord. As the tenant received the refund within short time of the landlord's verbal notice to end the tenancy and since I cannot confirm when the forwarding address was provided, I dismiss this part of the tenant's application.

Section 16 states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 44 of the *Act* states that a tenancy ends if notice is given under Sections 45, 46, 47, 48, 49, 49.1 or 50; by mutual agreement; if the tenant abandons the rental unit; if the agreement is frustrated; or at the end of the fixed term of the tenancy. I find that the landlord failed to provide notice to end the tenancy in accordance with any section of the *Act*.

I am not persuaded by the landlord's contention that the tenancy had to end, immediately and without written notice, to ensure the landlord's Worksafe BC responsibilities as an employer were met.

In addition to \$800.00 request for the double security deposit, the tenant claimed \$2,200.00 for aggravated damages including compensation for discrimination, misleading information, moving costs, emotional damage, distress and frustration, bad reputation and humiliation and breach of a tenancy agreement and the *Act*.

While I find the tenant should be compensated for the landlord's breach of the *Act*, I find the tenant's claim of \$2,200.00 to be excessive. I find that the amount of rent for one month, in lieu of a month notice as would be the minimum required notice to end a tenancy, except for unpaid rent, to be reasonable compensation.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$850.00** comprised of \$750.00 compensation and the \$50.00 fee paid by the Landlord for this application. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: January 14, 2010.

Dispute Resolution Officer