



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit, for compensation equivalent to the amount of the security deposit for the Landlords' failure to return the deposit within the time limits required under the Act, for compensation for loss of a facility, a breach of the Tenant's right to quiet enjoyment and for the Landlords' failure to make repairs as well as to recover the filing fee for this proceeding.

The Tenant served the Landlords by registered mail on September 25, 2009 with the Application and Notice of Hearing. According to the Canada Post online tracking system, the Landlords received the hearing package on September 28, 2009. I find that the Landlords were served as required by s. 89 of the Act and the hearing proceeded in their absence.

The Tenant's application is amended to correct an obvious error in the dispute address.

Issues(s) to be Decided

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

Background and Evidence

This month to month tenancy started on April 20, 2009 and ended on June 30, 2009 when the Tenant moved out. Rent was \$700.00 per month which included utilities. The Tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

The Tenant said the rental unit was advertised as including a dishwasher but that one was never provided by the Landlords during the tenancy. The Tenant claimed that there was a leak in a pipe in the hallway ceiling which resulted in water dripping several times per week throughout the tenancy. The Tenant also claimed that there was a hole in one of the walls of the rental unit from removing a stove pipe through which a lot of noises could be heard. The Tenant said she asked the Landlords to repair these things during the tenancy but they never were.

The Tenant said she gave the Landlords her written notice she was ending the tenancy on June 1, 2009 and thereafter, the Landlords harassed her by making an unreasonable

amount of noise. The Tenant said the noise was constant and persisted until she moved out.

The Tenant said the Landlords did not do a move in condition inspection report. The Tenant also said she gave the Landlords her forwarding address in writing on June 30, 2009 and did not give them written authorization to keep the security deposit. The Tenant admitted that her father gave the Landlords verbal authorization to keep \$200.00 from her security deposit in payment of the amount she had withheld from June's rent.

Analysis

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 to the Tenant.

I find that the Landlords received the Tenant's forwarding address in writing on June 30, 2009 but did not return her security deposit and did not make an application for dispute resolution to make a claim against the deposit. While an agent for the Tenant gave the Landlords verbal authorization to keep \$200.00 from the security deposit in payment of June's rent, the Act says that any deductions must be authorized in writing which I find that Landlords did not have. As a result, pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit or **\$700.00** to the Tenant.

Section 27 of the Act says (in part) that a Landlord may not terminate or restrict a service or facility unless the Landlord reduces the rent in an amount equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the service or facility. In the absence of any evidence from the Landlords to the contrary, I find that it was a term of the tenancy agreement that a dishwasher would be included in the rent. I also find that a dishwasher was not provided to the Tenant and as a result, she is entitled to compensation of \$25.00 per month for a loss of that facility for a 2 and 1/3 month period.

Section 32 of the Act says that a Landlord has a duty to repair and maintain a rental unit. Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including but not limited to reasonable privacy, freedom from unreasonable disturbance and use of common areas free from significant interference. In the absence of any evidence from the Landlords to the contrary, I find that the Landlords failed to repair a water leak and a hole in the wall which interfered with the Tenant's use and enjoyment



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of the rental unit. As a result, I find that the Tenant is entitled to compensation of \$25.00 per month for a 2 and 1/3 month period.

The Tenant sought to recover a maximum amount of \$100.00 for April 2009 and \$200.00 for May 2009 which represented her portion of the rent (the balance having been paid on her behalf by the Ministry of Children and Families). Given that the Tenant withheld her \$200.00 payment for June, 2009 rent, she did not seek compensation for that month. Consequently, the Tenant's damage award (set out above) will be reduced by \$50.00.

Furthermore, I find that the alleged harassment complained of by the Tenant took place during the month of June 2009. Given that the Tenant is not seeking compensation for the month of June, I find cannot make an award for the alleged harassment (or loss of quiet enjoyment) and that part of her application is dismissed. However, if the Landlords make a claim for the unpaid rent for June 2009, the Tenant may reapply for compensation for that month based her loss of the dishwasher, the Landlords' failure to repair and the alleged harassment.

As the Tenant has been successful in this matter, I also find that she is entitled to recover the \$50.00 filing fee she paid for this proceeding. In summary, I find that the Tenant is entitled to a monetary order as follows:

| | |
|--------------------------|----------------|
| Double Security deposit: | \$700.00 |
| Loss of Dishwasher: | \$33.33 |
| Loss of quiet enjoyment: | \$33.33 |
| Filing fee: | <u>\$50.00</u> |
| Total: | \$816.66 |

Conclusion

A monetary order in the amount of **\$816.66** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: January 04, 2010.

Dispute Resolution Officer