

Dispute Codes:

MNDC, MNSD, FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit and for compensation equal to one month's rent; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. Both parties gave affirmed testimony and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the *Residential Tenancy Act* (the "Act");
- (2) Is the Tenant entitled to a monetary order for compensation under the provisions of Section 51 of the Act?

Background and Evidence**Facts on which the parties agree:**

- The Tenant paid a security deposit in the amount of \$800.00 on September 29, 2006.
- Monthly rent at the end of the tenancy was \$1,760.00, due on the first day of each month.
- The Landlord used to live in Toronto, Ontario. On September 20, 2009, the Landlord sent the Tenant an e-mail advising that she would be moving back into the rental unit effective February 1, 2010, and advising the Tenant that he would have to vacate the rental unit.

- The Tenant advised the Landlord that he would move out earlier, as he did not wish to be looking for accommodation during the Olympic Games. The Tenant arranged to move out of the rental unit on November 1, 2009.

The Tenant gave the following testimony:

The Tenant testified that on November 9, 2009, the Tenant provided the Landlord with written notification of his forwarding address. The Tenant stated that he received a copy of an inspection report prepared by the Landlord's agent, but he was not present at the inspection and did not agree that he was responsible for the damages listed on the report. The Landlord has not returned the Tenant's security deposit.

The Tenant stated that he moved out of the rental unit as a result of the Landlord's notice that she would be moving back in. The Tenant did not receive compensation for moving and is applying for the equivalent of one month's rent in compensation.

The Landlord gave the following testimony:

The Landlord testified that her agent performed a move out condition inspection, in the absence of the Tenant. She stated that there was damage to the rental unit, which is the responsibility of the Tenant, and which is greater than the amount of the security deposit. The Landlord stated that neither she nor her agent provided the Tenant with notice of the move out inspection date. The Landlord stated that she has not filed an application against the security deposit.

The Landlord testified that she sublet the rental unit after the Tenant left, for the months of November and December, 2009. The Landlord testified that she moved into the rental unit on January 27, 2010.

Analysis

The Landlord provided testimony to suggest that she believes she has a claim for damages to the rental unit. This Hearing was convened to consider the Tenant's application and the Landlord has not filed an application for damages. The Landlord is at liberty to do so, should she so desire.

Security deposits are held in trust by a landlord, to be applied in accordance with the provisions of Section 38 of the Act.

Section 38(1) of the Act provides that, unless the landlord has the written consent of the tenant to retain any or all of the security deposit, within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord **must** repay any security deposit or pet damage deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the testimony of both parties, I find that the Landlord received the Tenant's forwarding address on November 9, 2009, and that the Landlord did not return the security deposit or file against the security deposit within 15 days. Therefore, pursuant to the provisions of Section 38(6) of the Act, I find the Tenant is entitled to a monetary award of double the security deposit, together with accrued interest.

Section 51 of the Act states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the Tenant relied on the Landlord's e-mail as notice to vacate the rental unit because the Landlord was moving in, and that he would not have otherwise moved out of the rental unit. Therefore, I find that the Tenant is entitled to compensation for damage or loss and fix that amount at the amount he would have been entitled to had he received a Notice to End Tenancy in the approved form. The Tenant moved out of the rental unit on November 1, 2009, and therefore, I prorate the monthly rent for the remaining 29 days of November. Therefore, I find the Tenant is entitled to compensation in the amount \$1,702.34, calculated as follows:

$\$1,760.00 \text{ divided by } 30 \text{ days} = \$57.66 \times 1 \text{ day. } \$1,760 - \$57.66 = \$1,702.34$

The Tenant has been successful in his application and is entitled to recover the filing fee in the amount of \$50.00 from the Landlord.

The Tenant has established a monetary order, as follows:

Double the security deposit	\$1,600.00
Accrued interest on \$800.00 from September 29, 2006	\$25.27
Compensation for vacating the unit for Landlord's use	\$1,702.34
Recovery of the filing fee	<u>\$50.00</u>
TOTAL amount due to Tenant	\$3,377.61

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of \$3,377.61 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (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*.

February 10, 2010

Date of Decision
