

DECISION

Dispute Codes: MNDC, MNSD

Introduction

This is the Tenant's application for a monetary order for compensation for damage or loss; and for double the security deposit paid to the Landlord.

Both parties appeared and gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matters

- (1) Does the *Residential Tenancy Act* (the "Act") have jurisdiction over this matter?

The Landlord stated that the Act does not apply, because the subject property is a motel, used for vacation or travel accommodation, and is therefore exempt under Section 4(e) of the Act.

The Tenant testified that he moved into the rental unit, not as vacation or travel accommodation, but as a home for him and his sons when he moved from Saskatchewan for work purposes.

The parties agreed upon the following facts:

- The Landlord provided the Tenant with a blank Condition Inspection Report form and instructed him to fill it out on his own.
- The Tenant paid the Landlord a security deposit in the amount of \$410.00 on October 19, 2009.
- The Tenant paid rent in the amount of \$820.00 per month, due on the first of the month.

- The Tenant agreed to stay at the motel for a period of 6 months.

Based on the agreed upon facts, I find that the Act does apply to this tenancy. A Condition Inspection Report is a form used by Landlords and Tenants at the beginning and end of a tenancy. The Tenant had no other primary residence and was not staying at the motel for vacation or travel purposes. Monthly rent was set at \$820.00, payable on the first day of each month. The Tenant paid a security deposit. I find that the parties entered into a verbal tenancy agreement and that the Act has jurisdiction over this tenancy.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for double the security deposit paid to the Landlord, pursuant to the provisions of Section 38 of the Act?

Is the Tenant entitled to a monetary order for compensation for damage of loss, pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Tenant testified that he provided the Landlord with his forwarding address on November 30, 2009, via express post. The Tenant provided a copy of the Canada Post tracking information, confirming the letter was delivered on December 1, 2009.

The Tenant testified that he moved into the rental unit on October 1, 2009, and paid the Landlord \$820.00 for October's rent. The Tenant testified that the Landlord did not require a security deposit until the Tenant had already moved into the rental unit. The Tenant stated that he had worked out his finances based on rent only and this meant he no longer had the funds he expected to have, until he received a settlement cheque from Saskatchewan.

The Tenant testified that he was expecting settlement money from Saskatchewan and made arrangements with the Landlord to pay his November rent, as follows: \$300.00 on November 1, 2009; \$400.00 on November 20, and the balance on November 27, 2009, when he received his settlement money. The Tenant testified that he was unable to pay the \$400.00 on November 20, 2009, but gave the Landlord \$100.00 on November 19, 2009, and promised to pay the remainder in full on November 27, 2009.

The Tenant testified that the Landlord came to the rental unit without 24 hours notice and evicted him and his sons on November 21, 2009, without due notice. He testified that the Landlord told him if the Tenant left immediately, the Landlord would refund him his security deposit in full. The Tenant testified that he did not wish to put his children at risk, and agreed to move out. The Tenant testified that he returned his keys to the Landlord and asked the Landlord to sign the move-out inspection report, but the Landlord refused. The Tenant testified that the Landlord also refused to give him back the security deposit. The Tenant testified that the Landlord told him that he was also going to charge him a weekly rate of \$400.00 per week for the month of November, and therefore the Tenant owed him \$1,200.00 plus \$100.00 for being late in his rent payment.

The Tenant testified that he was able to secure accommodation at a motel across the street at the rate of \$875.00 per month, on the condition that he paid his new Landlord rent on November 27, 2009, from his settlement money.

The Tenant is also applying for a monetary order for the difference in rent between the rental unit and his new accommodation and compensation for the Landlord's breach of the Act (eviction without notice; access without notice; and breach of quiet enjoyment).

The Landlord testified that the \$410.00 was not actually a security deposit, but was payment in advance for a portion of November's rent. The Landlord agreed that the Tenant paid his rent for the month of October in full and on time. The Landlord testified that the Tenant made the following payments in November towards November's rent:

October 21, 2009	\$410.00
November 1, 2009	<u>\$300.00</u>
TOTAL	\$710.00

The Landlord stated that the November 19th payment in the amount of \$100.00 was not for rent, but was a late fee. Therefore, the Tenant was in arrears in the amount of \$110.00 for November. The Landlord denied going to the Tenant's room without notice. The Landlord testified that he phoned the Tenant and told him to come to the office. The Landlord testified that he told the Tenant he couldn't stay there anymore, but did not force him to move out. The Landlord testified that the Tenant left of his own accord.

The Landlord stated that the Tenant still owes him \$110.00 for November.

The Landlord later stated that the Tenant still owes him \$390.00 for three weeks rent in November, because the Tenant was paying a weekly rent of \$400.00, rather than a monthly rate of \$840.00.

Analysis

The Landlord gave conflicting testimony with respect to the \$410.00 security deposit. At the beginning of the Hearing, he stated that it was a security deposit. At the end of the Hearing, he stated that it was rent paid in advance. The Landlord testified that rent was \$840.00 per month. Later in the Hearing, the Landlord testified that the Tenant was paying weekly rent in the amount of \$400.00 per week. The Landlord also fluctuated between accepting that the parties had a tenancy agreement, and denying such an agreement existed. The Landlord chose to rely on the Act, or claim that the Act did not apply, when it suited his purposes.

Faced with the conflicting and inconsistent testimony of the Landlord, I prefer the Tenant's version of events. Why would the Tenant agree to move out of the rental unit on 3 hours notice and put his sons on the street?

The Tenant has applied for compensation for the difference between what he would have paid for the rental unit and what he is currently paying for his new residence, for a period of six months. There was insufficient evidence to support this claim. A fixed term tenancy is a tenancy where a landlord and a tenant agree in writing that the tenancy will begin on a certain date and end on a specific date. There was no written tenancy agreement and therefore I find that this was a month-to month tenancy. Therefore, this portion of the Tenant's application is dismissed.

Pursuant to the provisions of Section 67 of the Act, I find that the Landlord evicted the Tenant without Notice, and that the Tenant is entitled to compensation for this breach, and for breach of quiet enjoyment, in the amount of \$500.00.

Section 38(1) of the Act provides that 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.

The Tenant has been successful in his application and is entitled to recover the filing fee.

I grant the Tenant a monetary order in the amount of \$1,370.00, calculated as follows:

Double the security deposit	\$820.00
Compensation for damage or loss	\$500.00
Recovery of the filing fee	<u>\$50.00</u>
Balance owing by the Landlord to the Tenant	\$1,370.00

Conclusion

I hereby grant the Tenant a monetary order in the amount of \$1,370.00 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 8, 2010

Date of Decision

CORRECTED 10 MARCH 2010

Dispute Resolution Officer