

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on November 23, 2009. Mail receipt numbers were provided in the Tenant's evidence. The Landlord confirmed receipt of the hearing documents.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order a) for the return of double her security deposit; and b) for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the month to month tenancy began on March 1, 2009 and ended when the Tenant vacated the rental unit on October 3, 2009. Rent was payable on the first of each month in the amount of \$1,100.00 and the Tenant paid a security deposit of \$550.00 on February 23, 2009. The Landlord did not complete a move-in inspection report and did not complete a move-out inspection report. The Tenant provided the Landlord her forwarding address, in writing, via registered mail on October 15, 2009. The Landlord returned \$270.71 of the \$550.00 security deposit on approximately October 12, 2009 and withheld the balance of \$279.29 for rent and damages.

The Tenant testified that when she first viewed the rental unit she was not told that the Landlord would be doing his laundry in her suite. The Tenant advised that the suite was constructed whereby the laundry machines were in the same room as the kitchen and that there were no doors separating the kitchen/laundry room from the rest of the rental unit. The Tenant stated that in the middle of the rental unit living room there was a stairway that led up to the main floor of the house, where the Landlord resided, and the door at the top of the stairs was not locked or secured between the suites.

The Tenant argued that on the day she moved into the unit she was shocked when the Landlord said to her "I'm just finishing up laundry" as she was not previously aware that they would be sharing laundry facilities. She was also shocked when she returned home on two separate occasions to find that the Landlord had entered the rental unit and lit a fire in the wood stove. The Tenant advised that the Landlord would knock and immediately open the upstairs door and yell down to speak to her, without prior notice. The Landlord would interrupt the Tenant to speak about such things as telling the Tenant there were deer in the yard, asking how the Tenant was doing, asking how things were going, and to discuss issues surrounding the cable bill.

The Tenant stated that at the early stages of the tenancy she did not want to create conflict so she nicely questioned the Landlord about his doing laundry in her suite and that she told the Landlord that she did not want him in her suite on days while she was at work and her son was home alone so she came up with a system that she would leave the Landlord a note to let him know when her son would not be at home and the Landlord could then do his laundry. The Landlord never once provided the Tenant a written notice to enter the rental unit.

The Landlord argued that he told the Tenant at the time she viewed the rental unit that they would be sharing the laundry facility. The Landlord confirmed that this was not listed in the tenancy agreement and that he did not provide the Tenant with a laundry schedule, in writing, to advise the Tenant of when the Landlord would be doing laundry. The Landlord confirmed that he never posted a notice to enter the rental unit and that later on in the tenancy he would only enter the rental unit to do laundry once he received the Tenant's note to confirm her son would not be home.

The Tenant stated that the Landlord also entered the suite on two occasions while she was at work, without prior notice, and lit a fire in the wood stove. The Tenant confirmed that the Landlord did not do this again after she asked him to stop.

The Landlord testified that he entered the rental unit on two separate occasions, without

prior notice, to start the fire in the wood stove and that he stopped doing this when the Tenant requested him to stop.

The Landlord argued that he put a chain lock on the door leading down the stairs into the rental unit from his suite, at the request of the Tenant, and he confirmed that he would always knock before opening the door to speak to the Tenant. The Landlord stated that he was conscious of the Tenant's need for privacy.

The Landlord confirmed that he returned \$270.71 of the \$550.00 security deposit, that he has not made application to the Residential Tenancy Branch for dispute resolution, that he does not possess an Order instructing the Landlord to retain a portion of the security deposit, and the Landlord does not have written permission from the Tenant to retain \$279.29 of the security deposit.

The Tenant stated that she is seeking \$800.00 for loss of quiet enjoyment of her suite due to the lack of privacy and the Landlord's continued entrance into her suite. The Tenant argued that she accepted this rental unit thinking she would not have move for a long time only to find herself having to move within six months to seek privacy and a suite that had a bathtub. The Tenant argued that she was seeking \$800.00 as this amount represented the amount she incurred to have to move again.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and

4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports that the Tenant provided the Landlord with her forwarding address, in writing, on October 15, 2009. The Landlord has not applied for dispute resolution, does not possess an Order to retain the security deposit, and does not have written permission from the Tenant to retain the security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit, in full, or file for dispute resolution no later than October 30, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I hereby approve her claim for the return of double, the balance of her security deposit and interest.

There is contradictory testimony relating to whether the Tenant was verbally advised that the Landlord would be entering the rental unit to do his personal laundry, prior to entering into the written tenancy agreement, and that based on the Landlord's verbal conversation the shared use of laundry facilities formed part of the tenancy agreement. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. In this case the Landlord bears the obligation to ensure all terms of the tenancy agreement are in writing, in accordance with section 13 of the *Act*.

The Landlord admitted that he also entered the rental unit, without prior notice, to start fires in the wood stove and that he would knock and then open the rental unit door, without prior written notification

Every tenancy agreement contains an implied covenant of quiet enjoyment whereby the Tenant has exclusive possession of the rental unit subject to: a) the Landlord's right of

entry as governed under the Act, and b) reasonable privacy, and c) freedom from unreasonable disturbances in compliance with section 28 of the Act.

In addition, the Landlord's right to enter rental unit is restricted as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As per the aforementioned, I find that the Tenant has proven the test for damage or loss, as listed above and that the Landlord has breached the Tenant's right to quiet enjoyment. Therefore I hereby approve the Tenant's claim in the amount of \$600.00, an amount equal to \$100.00 for each month of the six month tenancy agreement.

As the Tenant has been successful with her application I hereby award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Return of DOUBLE of the balance of security deposit \$558.58 (\$550.00 - \$270.71 x 2)	\$558.58
Interest owed on \$550.00 from February 23, 2009 to March 1, 2010	0.00
Damages for loss of quiet enjoyment	600.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,208.58

I have included in with the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his obligations as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,208.58**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: March 01, 2010.

Dispute Resolution Officer