

DECISION

Dispute Codes MNDC MNSD LAT FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for return of all or part of the pet and or damage deposit, money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, an Order to authorize the tenant to change the locks to the rental unit, for other requests, 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*, served personally by the Tenant to the Landlord on February 15, 2010. The Landlord confirmed receipt of the hearing package.

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 return of all or part of the pet and or damage deposit, and b) 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*?

Is the Tenant entitled to an Order to authorize the tenant to change the locks to the rental unit and for other requests under section 70 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the verbal month to month tenancy began on October 1, 2009; the monthly rent is payable on the first of each month in the amount of \$600.00; and the Tenant paid a security deposit of \$300.00 on September 26, 2009.

The Tenant testified that she is seeking reimbursement for January 2010 and February 2010 rent for the amount of \$1,200.00 (\$600.00 x 2) plus \$280.00 for reimbursement of the cost of a play station DSI gift she purchased for her son which she alleged was

stolen from her rental unit by the Landlord. The Tenant confirmed she did not submit evidence to prove that her son's gift was stolen by the Landlord and argued that she had requested a copy of the police file however her request is pending the approval from the privacy commission.

The Tenant is seeking an Order to provide her permission to change the locks on the rental unit door to prevent the Landlord from entering into the rental unit illegally.

The Tenant confirmed she is still residing in the rental unit and now understands that the Landlord is entitled to continue to hold the security deposit in trust until such time as the tenancy ends. The Tenant withdrew her request for the return of her security deposit.

The Landlord testified that she has requested a copy of the police report mentioned by the Tenant and argued that she did not steal anything from the Tenant's rental unit. When asked if she had been charged with theft the Landlord advised that there have been no charges and that the police came to her home and spoke to her about the allegations. The Landlord advised that the Tenant has already changed the lock to her rental unit and the Landlord argued she has never entered the rental unit without proper notice before hand.

The Landlord confirmed she is not the owner of the house rather she rents the entire house and then rents out the basement suite to supplement her own costs.

The Tenant testified that she has previously contacted the Owner of the house to provide him with a copy of the key for the new lock but that he has not stopped by to pick up the new key.

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 Tenant has alleged that the Landlord entered her suite illegally and stole her son's gift and is seeking reimbursement of two month's rent as compensation for "knowing her Landlord took her possessions illegally" and reimbursement of the cost of the gift. There is no evidence to support the Tenant purchased the alleged gift, there is no evidence to support the cost of the alleged gift, there is no evidence to support the Landlord took the alleged gift, there is however opposing testimony from the Landlord which counteracts the Tenant's testimony. Based on the aforementioned I find the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss her claim for \$1800.00.

The testimony supports that a police file has been created and the police have been speaking with the Landlord which adds to the credibility of the Tenant's testimony. Based on the aforementioned I approve the Tenant's request to install different locks, at the Tenant's cost, on the rental unit door. While I don't approve of the Tenant's actions of installing the locks prior to having an Order to do so, in light of the confirmed testimony I appreciate that the Tenant's actions were an attempt at providing protection to her property.

As the Tenant has only partially succeeded with her claim I award her recovery of \$25.00 of the filing fee.

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

Conclusion

I HEREBY ORDER the Tenant authority to change the lock(s) to the rental unit and prohibit the Landlord from replacing those locks or obtaining keys or other means of

entering the rental unit for the duration of this tenancy, in accordance with section 70 of the *Residential Tenancy Act*.

The Landlord is HEREBY ORDERED NOT TO ENTER the rental unit other than as authorized under section 29 of the *Residential Tenancy Act*.

The Tenant is HEREBY ORDERED to provide the Owner of the rental unit a copy of the new key(s) to her rental unit.

The Tenant is HEREBY AUTHORIZED to deduct the \$25.00 awarded from the filing fee from her next rent payment.

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: April 06, 2010.

Dispute Resolution Officer