

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call this date to deal with the tenant's application for double the return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

Both parties attended, gave affirmed oral evidence, and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to double the return of the security deposit?

Background and Evidence

This tenancy began in mid-November, although there is conflicting evidence from the parties as to the exact date. However, it is agreed by the parties that a pro-rated amount of rent was paid for the month of November, 2009.

At the outset of the tenancy, the tenant paid a security deposit in the amount of \$300.00. The landlord states that it was paid by cheque on November 12, 2009, however the tenant asked that she not cash the cheque right away. The landlord testified that she called the tenant on November 21, 2009 to ask if she could cash the cheque, and did so on that date.

Rent in the amount of \$600.00 is payable on the 1st day of each month, and there are no rental arrears. The tenant was also entitled to unlimited long-distance calling in North America, fire-wood, cable and internet for that rental amount. She was also entitled to \$20.00 per month of the hydro, and any hydro bills over that amount were the responsibility of the tenant. The parties entered into this tenancy agreement using "scrap paper" and no official form was used. That agreement was provided in advance of the hearing and states that it is a fixed term tenancy for 6 months.

The tenant vacated the unit upon giving one months notice to the landlord on December 31, 2009, and she vacated the unit on January 17, 2010 having paid the rent in full for that month.

On January 19, 2010, the tenant attended the residence and saw the landlord through the window, but testified that the landlord locked the door and refused to talk to the tenant. She stated that she waited there, with her dog in the yard, for approximately 20 minutes, knocking on the door, but the landlord refused to open the door. The landlord testified that the door sticks, she did not lock it, and she did not know it was the tenant at the door until she saw the dog, and let the dog in the house.

The parties did have a discussion that day, wherein the tenant was told that hydro was still outstanding, and that the landlord wanted the carpets professionally cleaned, and didn't want to return the security deposit at that point because she didn't know what the cost would be. The tenant told the landlord that if she got back \$150.00, she would be happy with that, but the landlord testified that it may have been more or less and she did not want to cheat the tenant out of any money. The tenant was frustrated at that point and left her forwarding address in writing with the landlord.

The tenant testified that she did not hear from the landlord again until February 15, 2010, when she received an email from the landlord which stated that, among other things, they needed to talk about damage to the unit and what would be covered by the security deposit.

Analysis

Firstly, the *Residential Tenancy Act* states that within 15 days of receiving the forwarding address in writing from the tenant, the landlord is required to return all of the security deposit or make application for Dispute Resolution for an order permitting the landlord to retain any portion of it. If the landlord does neither, the tenant is entitled to double the return of that security deposit. The tenant did offer to accept \$150.00 of that in lieu of any further hydro or cleaning charges, but the landlord declined the offer, and then did not make an application for dispute resolution within the time required.

Further, the *Residential Tenancy Act* requires that both parties are present for an inspection on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Another inspection is required on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day. Neither of these inspections took place with the use of any written forms, and therefore, I cannot reasonably conclude that any amount ought to be deducted from that security deposit, and I have no application by the landlord to retain any part of it; I have no discretion under the *Act*. The landlord may be entitled to claim amounts from the tenant for damages or money owed for the utilities, but I have no application before me for any such claims.

To assist the parties for future tenancies, I am enclosing a pamphlet entitled, "A Guide for Landlords and Tenants in British Columbia."

Conclusion

For the reasons set out above, I hereby award to the tenant the sum of \$600.00 from the landlord. The order must be served on the landlord. The tenant is also entitled to recovery of the \$50.00 filing fee. This order may be filed in the Provincial Court of British Columbia and may be 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: April 16, 2010.

Dispute Resolution Officer