

DECISION

Dispute Codes:

MNSD, MNDC, SS, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit, for damages or loss, to serve documents or evidence in a different way and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on December 12, 2009 to the service address included on the tenancy agreement and to the building manager at her rental unit address. Canada Post tracking numbers and receipts were provided as evidence of service. Shortly prior to mailing the documents to the building manager the tenant had telephoned the manager to confirm her unit address and told her that dispute documents were being mailed. The landlord's registered mail was returned to the tenant as unclaimed.

I find that the landlord and building manager have both been served with notice of this hearing, pursuant to section 89 of the Act; effective on the fifth day after mailing; December 17, 2010. The landlord did not appear at the hearing.

Preliminary Matter

As service was proven, the portion of the tenant's Application requesting substituted service was withdrawn.

During the hearing I requested that the tenant submit her original copies of the tenancy agreement and the move-in condition inspection. I find that these documents do not prejudice the landlord, as the landlord created the documents and would have provided the copies to the tenant.

The Application included a request for the \$50.00 filing fee ordered paid to the tenant as the result of a previous hearing. The tenant understood that I would read that decision in order to determine if the matter had been previously decided. During the hearing I accessed a copy of the decision issued on November 27, 2007 and determined that the tenant had been awarded a \$50.00 filing fee which she could deduct from rent owed. That decision gave the tenant leave to pursue a monetary claim in relation to the fireplace.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to compensation for loss suffered during the tenancy?

Is the tenant entitled to return of her deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 1, 2007, a deposit in the sum of \$425.00 was paid on September 29, 2007. The tenant moved out, after giving notice, on August 31, 2009. A move-in and move-out condition inspection was completed, but the tenant did not receive a copy of the move-out report.

The tenant provided her forwarding address on the move-out condition report completed at the end of the tenancy. The tenant submitted as evidence a copy of a form she received in the mail from the landlord on September 1, 2009. This form indicates the tenant's forwarding address, the amount of deposit held, interest accrued and a deduction for the total amount due to the lack of a move-out condition inspection and forwarding address. The tenant remains at the address supplied to the landlord at the end of the tenancy; the same address that appears on the form mailed to the tenant by the landlord.

The Application dispute details indicate that the current building manager left the tenant a voice mail message on December 5, 2009, stating she had written their head office, requesting return of the tenant's deposit to her.

The tenant continued her efforts to retrieve her deposit paid, by asking the current building manager, submitting emails to the landlord and a November 16, 2009 letter sent to the landlord by regular mail which supplied her address again. The tenant has not received her deposit.

The tenant is claiming compensation for the loss of use of a gas fireplace from the start of the tenancy until February, 2009. The tenant is claiming a loss of value of the tenancy in the sum of \$8.00 per day for 510 days; from October 1, 2007 to February 22, 2009.

The rental unit was advertised as having a fireplace and at the start of the tenancy the tenant was told the fireplace was operational. Within the first month of the tenancy the tenant complained to the building manager, who attended at the rental unit in an attempt to start the fireplace.

The tenant submitted copies of letters dated October 15, 2007; October 26, 2007; November 16, 2007; notes regarding a conversation on November 6, 2007 and a final letter issued to the landlord on December 1, 2008. This communication all referenced the fireplace and the need for repair. The December 1, 2008 letter requested that the repair take place by December 31, 2008, or the tenant would file for dispute resolution. The tenant then made verbal requests for repair, which resulted in the fireplace being fixed by February 22, 2009; 510 days into the tenancy.

The tenant has claimed a loss of value of her tenancy as the fireplace was inoperable and the landlord failed to maintain and repair the rental unit. The tenant was frustrated that she rented a unit that was advertised as having a fireplace, and then having to repeatedly request repairs.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a **landlord must** pay the tenant double the amount of security deposit. (Emphasis added)

There is no evidence before me that that landlord has repaid the deposit as requested in writing by the tenant. Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the \$425.00 deposit paid to the landlord plus interest in the sum of \$8.04.

In relation to the tenant's claim for loss of the value of her tenancy due to the inoperable fireplace, I find that the fireplace was a facility provided by the landlord as part of the tenancy agreement. This facility was unavailable to the tenant and was a term of the tenancy. I base this decision on the fact that the fireplace was mentioned in the advertisement and the landlord's efforts, initially, to investigate the request for repair and the eventual repair made.

The fireplace was not the sole source of heat, but the landlord failed to give the tenant any notice that this facility would not be repaired in a timely fashion and did not provide the tenant with any reduction in rent, recognizing the loss of value of the tenancy during the period of time the fireplace was inoperable.

Therefore, I find, pursuant to section 27(2) of the Act, that the landlord failed to provide the tenant with the required thirty days written notice of the reduction in services or any rent reduction for the loss of the fireplace.

I find that the tenant is entitled to compensation in the sum of \$2.00/day from October 1, 2007 to February 22, 2009, inclusive. I have taken into account the summer months, when the loss of a fireplace would be minimized and determined what I find to be reasonable monthly compensation in the range of \$56.00 to \$62.00. Therefore, the tenant is entitled to compensation in the sum of \$1,020.00

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,928.04, which is comprised of double the deposit paid in the sum of \$850.00, interest in the amount of \$8.04, loss of the use of a facility in the amount of \$1,020.00 and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$1,928.04. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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*.

Dated: May 5, 2010.

Dispute Resolution Officer