

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call on this date to deal with the tenant's application for a monetary order for return of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of this application.

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

Issues(s) to be Decided

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

Is the tenant entitled to a monetary order for compensation or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on September 1, 2006. Rent in the amount of \$800.00 was payable on the 1st day of each month, and there are no rental arrears. The tenant also paid a security deposit in the amount of \$400.00 on August 12, 2006.

The tenant testified that on February 10, 2008, while getting ready to go to a hockey game that she had tickets for, an apprentice plumber attempted to fix a water pipe in the house. The main water source wasn't cut off and a flood occurred which damaged the tenant's basement suite, and her belongings. The landlord gave her \$100.00 to get a motel, however she could not stay in a motel with her dog. She used the money to board her pet and took a taxi to Vancouver to stay with a friend. She also missed 2

days of work, and returned to the unit on February 12, 2008. She asked for compensation, but the landlord stated that she didn't have any money until the insurance was paid. She testified that she was further told by the landlord that she had to move her damaged items out of the unit or she wouldn't receive back her security deposit. She had a friend help her take some furniture items, 2 couches and a bed, to the dump, and provided a receipt for \$18.00 in dump fees. She also rented a storage area for her remaining belongings.

On March 1, 2008, the tenant gave the landlord the key to the suite and a copy of all receipts, including a list of items that she wanted compensation for, as well as a return address to send the security deposit to. The landlord refused to sign the "Compensation Claim" which was prepared by the tenant. The tenant testified that she stayed with a co-worker for 2 months and paid \$450.00 per month for that accommodation. On May 15, 2008, she found permanent accommodation. The tenant is claiming:

- \$900.00 for alternate accommodation for 2 months;
- \$800.00 for the return of rent paid for the month of February, 2010;
- \$42.00 for her hockey tickets;
- \$1,500.00 for dog boarding at \$25.00 per day for 2 months;
- \$450.00 for 2 days of lost wages;
- \$220.50 for 2 months of storage locker fees at \$110.25 per month;
- \$60.83 for moving boxes, tape and moving supplies;
- \$26.00 for moving supplies;
- \$131.25 for moving fees into her permanent accommodation;
- \$18.00 for dump fees;
- \$250.00 for replacement of the 2 used couches and bed damaged by the flood;
- \$1,600.00 being equivalent of 2 months' rent for the distress in having to move to Vancouver and quit her job, and attempt to find accommodation that would accept her dog;
- \$100.00 for the cost of filing for dispute resolution.

The unit was not inhabitable after the flood. The tenant further testified that the landlord told her that if she didn't sign a lease, even after moving out, she would not get anything in damages.

The landlord testified that the tenant was a good tenant. The prior owner had left a plumbing problem, and the landlords called a plumber who sent an apprentice. The problem turned out to be the main water valve, which was diverted to the outside after the initial flooding. The landlord also testified that she washed all of the tenant's laundry which took about 2 days, and that her clothes were on the floor, which added to the damage suffered by the tenant.

The landlord further testified that the note that the tenant wanted her to sign included claims that she felt were ridiculous, which is why the landlords refused to sign it. She stated that the insurance company told her that the tenant should have had her own insurance, and that the landlord did not have any obligation to do the laundry or anything else for the tenant.

The landlord had told the tenant that a meeting was going to take place with the insurance adjuster however the tenant did not want to go to the meeting and told the landlord she would be moving instead. The landlord feels that the insurance company would have helped her with rent, and the tenant would have ended up with a new apartment. The suite has not been rented since this tenant moved out.

She further testified that the document she asked the tenant to sign was for proof to the insurance company that the tenant was paying \$800.00 per month for rent. She stated that insurance would not have paid for damages, but they would have helped with accommodations. The unit was ready to re-rent about 2 months after the flood.

Analysis

The undisputed evidence is that the flooding occurred on February 10, 2010, after the tenant had paid for the month's rent. I find that the tenant is entitled to 2/3 of that rent back, in the amount of \$515.00.

With respect to the security deposit, the *Residential Tenancy Act* states 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 the security deposit or

make an application for dispute resolution claiming against the security deposit. If the landlord fails to do that, the landlord must pay the tenant double the amount of the security deposit. I find that the tenancy ended in February, 2010, through no fault of either party, and that the landlord failed to do either. I have no discretion under the *Act*, and must award double the security deposit.

With respect to the claim for damages, the onus is on the tenant to prove that the landlord was negligent. The tenant's claims are similar to those that would likely be found in an insurance claim however the tenant had an option of purchasing tenants' insurance, but did not exercise that option. The burden of proof for claims in damages lies on the person claiming to prove:

- that the damage or loss exists;
- that the damage or loss occurred because of a breach of the *Act* or tenancy agreement;
- the amounts; and
- that the claiming party did what was necessary to mitigate, or reduce the loss.

The tenant has not satisfied all 4 elements for the itemized claim before me. The landlord had no reason to believe that the flooding would take place, and therefore, the second element has not been met. The tenant has not provided sufficient evidence that the landlords were in breach of the *Act*, regulations or tenancy agreement.

Conclusion

I find that the tenant has established a claim for the security deposit of \$400.00, accrued interest of \$12.91, and double the base amount of the security deposit in the amount of \$800.00, for a total of \$812.91. The tenant is also entitled to \$515.00 in unused rent, and to recover the \$100.00 filing fee for this application. I grant the tenant an order under section 67 for the balance due of \$1,427.91. This order may be filed in the 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 25, 2010.

Dispute Resolution Officer