

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit plus compensation equal to the amount of the security deposit due to the Landlord's failure to return it within the time limits required under the Act. The Tenant also applied for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application, Notice of Hearing and evidence package (the "hearing package") by registered mail on February 18, 2010 however the Landlord refused to accept service of the hearing package on February 19, 2010 and it was returned to the Tenant 3 days later. Section 90 of the Act says that a document served by mail is deemed to be received by the recipient 5 days later even if the recipient refuses to accept it. Consequently, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?
2. Is the Tenant entitled to compensation for other matters and if so, how much?

Background and Evidence

This fixed term tenancy started on July 1, 2009 and was to expire on June 30, 2010, however it ended on January 31, 2010 when the Tenant moved out pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property. Rent was \$1,000.00 per month which included utilities such as cable. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The Tenant said that although the Landlord initially agreed to include cable in the rent, the Landlord refused to provide it throughout the tenancy. The Tenant also said that at the beginning of the tenancy, her entrance to the rental unit was through the Landlord's garage. The Tenant claimed that in mid-November, 2009 the Landlord advised her that the Landlord would be having a separate entrance constructed and in order to do so, a stair case on the rental property would have to be removed. The Tenant said the Landlord told her that the construction would take 2 – 3 days, however it started in mid-November 2009 and had not been completed by the end of the tenancy.

The Tenant said the noise and dust from the construction disturbed her use and enjoyment of the rental unit. The Tenant also claimed that on a number of occasions, the Landlord allowed construction workers to enter the rental unit without any notice to

her. The Tenant claimed that on January 16, 2010, while she was home the Landlord let 2 construction workers into her home without any prior notice. The Tenant said she complained to the Landlord about the unauthorized entry but the Landlord told her if she didn't like it she could move and later that day gave her a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant said the Landlord continued to allow construction workers into the rental unit without proper written notice (containing the date and time) despite the Tenant's requests to do so. The Tenant said she came home on January 26, 2010 and found a construction worker in the rental unit although she had received no notice from the Landlord. The Tenant said she asked the construction worker to leave but he refused so she called the police. The Tenant said the police told the Landlord to stop the construction but as soon as the police left, the Landlord told the construction worker to continue working. The Tenant said that when she asked the construction worker to leave again, the Landlord and her spouse pushed her up against a wall and smashed her foot with a piece of wood. The Tenant said she was very frightened by this incident and suffered a fractured toe.

The Tenant said she contacted the police again following this incident but they advised her that it would probably be best to move out as soon as possible. Consequently, the Tenant said she gave the Landlord written notice on January 26, 2010 that she would be moving out at the end of the month and requested her security deposit back and compensation for her last month's rent (ie. for the month of January 2010) which she had already paid. The Tenant said she also gave the Landlord her forwarding address in that letter. The Tenant said that she and a witness tried to give the letter to the Landlord in person on January 26, 2010 however the Landlord would not open her door and instructed the Tenant to leave it in her mail box.

The Tenant said she also asked the Landlord a number of times to return 5 post-dated rent cheques to her but to date she has not done so. The Tenant said her bank charges a fee of \$10.00 per cheque to put a stop payment on them.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Pursuant to s. 90 of the Act, the Landlord is deemed to have received a document left in her mail box 3 days later. Consequently, I find that the Landlord received the Tenant's forwarding address in writing on January 29, 2010 but did not return her security deposit and did not make an application for dispute resolution to make a claim against the

deposit. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or **\$1,000.00** to the Tenant.

Section 51 of the Act says that a tenant who receives a 2 Month Notice to End Tenancy is entitled to receive their last month's rent free and if a Tenant has already paid their last month's rent, then the Landlord must reimburse them their rent payment. I find that the Landlord served the Tenant with a 2 Month Notice to End Tenancy on January 16, 2010 and that the Tenant had already paid her rent for January 2010. Consequently, I find that the Tenant is entitled to recover her last month's rent payment of **\$1,000.00** from the Landlord as her compensation under s. 51 of the Act.

Section 27(2) of the Act says that if a Landlord terminates or restricts a service or facility, the Landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the terminated service or facility. The copy of the tenancy agreement provided as evidence by the Tenant shows that cable is included in the rent. In the absence of any evidence to the contrary from the Landlord, I find that the Landlord did not provide cable to the Tenant and therefore must compensate the Tenant for the termination or restriction of that service which I assess at \$40.00 per month for 7 months for a total of **\$280.00**.

Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including but not limited to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter in accordance with s. 29 of the Act. In the absence of any evidence from the Landlord to the contrary, I find that the ongoing noise and dust Landlord's construction project on the rental property unreasonably interfered with the Tenant's use and enjoyment of the rental unit. I also find that the Landlord breached the Tenant's rights to exclusive possession and reasonable privacy by permitting construction workers to enter the rental unit on a number of occasions over the 2 ½ month period without written notice or proper written notice to the Tenant. Consequently, I award the Tenant the amount of \$500.00 per month for the Landlord's breaches for a total of **\$1,250.00**.

RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

"These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

I find the Landlord's actions in this matter were willful and indifferent to the flagrant breaches of the Tenant's rights. In particular, I find that the Landlord frequently permitted construction workers into the Tenant's rental unit without her consent and without notice to her despite her objections. I also find that on January 16, 2010 when

the Tenant complained to the Landlord about this, the Landlord sought to end the tenancy by giving the Tenant a 2 Month Notice to End Tenancy. I further find that when the Tenant discovered workers in her rental unit on January 26, 2010, the Landlord refused to comply with a directive of the police to have them leave and physically assaulted the Tenant causing her injury. Consequently, I award the Tenant aggravated damages in the amount of **\$1,500.00**.

I also find that the Tenant has made a number of requests (both verbally and in writing) to the Landlord asking her to return the Tenant's post-dated rent cheques but that the Landlord has failed or refused to do so. Consequently, I award the Tenant compensation of **\$50.00** representing the banking fees that the Tenant will have to incur to put a stop payment on those cheques. As the Tenant has been successful in this matter, I further find that she is entitled pursuant to s. 72 of the Act to recover from the Landlord the **\$100.00** filing fee that she paid for this proceeding. Consequently, I find that the Tenant has made out a total claim for **\$5,180.00**.

Conclusion

A monetary order in the amount of **\$5,180.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 31, 2010.

Dispute Resolution Officer