

DECISION

Dispute Codes:

MNDC, MNSD, 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 compensation for damage or loss under the Act; return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed receipt of all evidence that was before me for reference.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act?

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant is claiming the following:

Loss of use of suite – November 2009	100.00
Loss of use of suite – January 2010	200.00
Loss of use of suite – February 2010	200.00
Double the deposit paid	400.00
Less \$185.00 returned	915.00

Tenant's Submission:

The tenant moved into the landlord's home on October 10, 2009. The tenant moved into a downstairs suite in a home owned by the landlord; she had a bedroom, bathroom and kitchen. The tenant submitted a hand-written note initialed by the landlord, which stated the tenant was to pay "\$400.00/month and \$200.00 for security."

On October 30, 2010, the landlord moved into the rental unit with the tenant. The tenant did not agree to this living arrangement and is claiming loss of value of her tenancy as a result of the landlord's presence in her rental suite.

The tenant made the following payments to the landlord:

October 2009 rent	300.00
December 2009 rent + deposit	400.00 + 100.00
January 2010 rent	400.00
February rent	400.00
	1,700.00 rent + 200.00 deposit

The tenant remained in the home, even though she found the landlord to be controlling and unreasonable and at the end of January or beginning of February, 2010, the tenant sought assistance through an advocacy organization.

At the end of December, 2009, the landlord moved out of the tenant's unit, but some of her belongings remained in the suite.

The tenant submitted a copy of written notice dated May 2, 2010, ending her tenancy effective the end of the month. On February 25, 2010, the tenant provided the landlord with her written forwarding address, requesting her deposit be returned. The tenant moved out on February 25, 2010. On March 10, 2010, as requested by the tenant, the landlord returned \$185.00 of the \$200.00 deposit paid.

Landlord's Submission:

The landlord's written submission indicated that she met the tenant at a local immigrant services office and that the tenant needed somewhere to live. The submission indicated that the tenant was offered accommodation at \$300.00 for the month of October and that rent would be \$400.00 per month plus a \$200.00 deposit.

The landlord told the tenant that she would be moving into the rental unit with the tenant, as her upstairs suite had been rented and that she would remain until a 3rd suite was completed for occupation. The landlord used the upstairs suite until November 4, 2009, when she then moved in with the tenant. The landlord offered rent in the sum of \$300.00 per month during the time the unit was shared; a period of 53 days.

The landlord was assisting the tenant, who she described as a friend she had recently met. The landlord provided the tenant with furniture and they shared the bedroom, bathroom and kitchen, with the landlord providing a bed for herself and her daughter and one for the tenant.

The landlord denied that a tenancy existed. The landlord accepted rent toward food and other costs and did accept 2 deposit payments from the tenant as "security" for rent.

The landlord moved out of the rental unit on December 24, 2009, as the 3rd unit was then ready for occupancy.

The landlord accepted rent payments from the tenant between October 10, 2009 and February 5, 2010. The landlord's evidence indicated that the tenant failed to give

proper written Notice, ending the tenancy, that the tenant vacated on February 25 and returned the keys on March 9, 2010. On March 1, 2010, a new occupant moved into the suite.

On March 10, 2010, the landlord left the deposit for the tenant at a local community organization, as requested in writing by the tenant. The landlord deducted \$15.00 from the deposit to cover rent arrears. The landlord received the tenant's written forwarding address on March 8, 2010 and submitted that she had fifteen days from March 8, 2010, to return the deposit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation is the reason the party making the application incurred damages or loss;
3. Verification of the amount of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 4 of the Act provides, in part:

4 *This Act does not apply to*

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

(Emphasis added)

I find, pursuant to section 4 of the Act, that a tenancy commenced on October 10, 2009, when the tenant moved into the rental unit and had sole possession of the unit, as the tenant lived in the rental unit without the presence of the landlord sharing the bathroom and kitchen. Whether there was a misunderstanding or a lack of communication between the parties, the tenant initially had sole possession of the rental unit.

I find that effective November 4, 2009, pursuant to section 4 of the Act, the tenancy ceased due to the presence of the landlord in the rental unit, during which time the landlord and tenant shared the bathroom and kitchen. Once the landlord moved in with the tenant and shared the bathroom and kitchen facilities, I find that the living arrangement no longer fell within the jurisdiction of the Act.

I find, that effective December 25, 2009, the tenancy was reinstated and jurisdiction under the Act resumed, as a result of landlord moving out of the rental unit, leaving the tenant as the sole occupant.

I find that this tenancy ended on February 25, 2010, when the landlord had possession of the rental unit.

In relation to the tenant's claim for compensation due to a loss of use of the rental unit; the tenant was at liberty at the time the landlord moved in, to submit an Application requesting an Order of possession for the rental unit. The tenant did not submit an Application seeking an immediate remedy and waited until almost one month after the tenancy ended to seek compensation for loss of use. Therefore, I find, pursuant to section 7 of the Act, that the tenant failed to mitigate the loss that she is now claiming and that her claim for compensation is dismissed.

In relation to the tenant's claim for return of double the deposit paid, the parties agreed that the landlord accepted a \$200.00 deposit from the tenant. I have rejected the landlord's submission that the deposit was security for rent and did not form a deposit within the jurisdiction of the Act. I find that the deposit paid was in relation to the tenancy that commenced on October 10, 2009, whether it was paid at that time or some other time during which the tenant occupied the rental unit. The landlord cannot claim only some benefits or obligations under the Act, and then ignore other provisions.

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 submit 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.

The landlord did give the tenant a cheque within the fifteen day time frame, but the landlord did not return all of the deposit, as she made a deduction without obtaining a monetary Order allowing her to do so. Therefore, as the landlord did receive a deposit from the tenant and failed to return all of the deposit within fifteen days of receipt of the tenant's forwarding address, I find, pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the deposit paid in the sum of \$400.00, less the \$185.00 previously given to the tenant. Therefore, the tenant is entitled to a monetary Order in the sum of \$215.00.

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 \$265.00, which is comprised of double the deposit in the sum of \$400.00, less \$185.00 previously paid, plus \$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 \$265.00. 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.

The tenant's claim for compensation is dismissed.

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: July 21, 2010.

Dispute Resolution Officer