



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit; damage or loss under the Act, regulations or tenancy agreement; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

The landlord confirmed receipt of the tenant's application and evidence. I determined the landlord had not served the landlord's evidence upon the tenant and I did not consider the landlord's documentation in reaching this decision.

Issues(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Is the tenant entitled to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

I was provided undisputed evidence as follows. The tenancy commenced February 1, 2009 and ended March 31, 2010. The monthly rent was \$1,400.00. The tenant paid a \$700.00 security deposit and a \$200.00 "utility deposit" shortly before moving into the rental unit. The BC Hydro account was in the landlord's name and the tenant would pay the landlord for hydro consumption. The parties participated in a move-out inspection of the rental unit and the landlord prepared and provided a copy of a move-out inspection

report to the tenant. At the conclusion of the move-out inspection, the tenant and the landlord's agent signed a document agreeing as follows:

- "[Tenant] agrees not to take the alarm away without charge to the landlord."
- "And landlord pays to [Tenant] \$475 for damage deposit after deduction. This is final."
- "Note: call [Tenant] when hydro bill comes if it is more than \$200. [Tenant] has to pay to landlord for electrical usage for the month of March 1st to March 31st."

I heard that after the above document was signed the parties exchanged the keys and a cheque for \$475.00. Shortly afterwards the landlord requested return of the cheque claiming there was an error. The tenant refused to return it to the landlord. The tenant attempted to cash the cheque; however, the landlord had placed a stop payment on the cheque.

In making this application the tenant is seeking return of double the security deposit and compensation of \$209.00 for installation of an alarm system. The tenant submitted that the landlord failed to fulfil the landlord's terms of the settlement and that it is no longer valid. The tenant theorized that the landlord intentionally agreed to refund the tenant \$475.00 in order to obtain the keys and then upon receipt of the keys the landlord tried to change the agreement.

I was provided undisputed evidence that the tenant sent the landlord a letter dated April 12, 2010. In the letter the tenant requested the landlord refund the security deposit and cost of alarm installation in the amount of \$909.00 within 15 days and provided a forwarding address in writing.

The landlord explained that upon receiving the tenant's letter the landlord emailed the tenant and waited for a response. The tenant did not respond. The landlord did not refund any portion of the security deposit and did not file an Application for Dispute Resolution. The tenant claimed he did not receive the landlord's email.

The landlord testified that on the back of one of the pieces of paper given to the tenant at the end of the tenancy was a detailed calculation showing a deduction of \$325.00 was to be made for damages and that the tenant made a copy of all the pages and had a copy of that calculation. The landlord claimed he realized he had made a calculation error in agreeing to pay the tenant \$475.00 and cancelled the cheque because the tenant was not being honest about the deductions agreed upon. The tenant acknowledged seeing the landlord make notes and calculations but denied having a copy of the calculation showing \$325.00 was agreed upon for deductions.

During the hearing both parties agreed that the hydro consumption for February 3, 2010 through March 31, 2010 was \$213.80 and the tenant agreed he owed the landlord \$13.80 after taking into account the \$200.00 the landlord was paid for a "utility deposit".

I have considered the following documentary evidence provided by the tenant: the settlement letter of March 31, 2010, the cheque written by the landlord March 31, 2010, the tenant's letter of April 12, 2010 and the condition inspection report.

Analysis

The Act requires a landlord and tenant to meet and inspect a rental unit at the beginning and end of every tenancy. The Act also permits the parties to agree upon deductions to be taken from a security deposit, in writing, provided inspection requirements have been met. I find the requirements of the Act are intended to enable parties to reach a mutual agreement with respect to damages and deductions from a security deposit. I find the parties did make such an attempt at the end of this tenancy.

I was provided disputed verbal testimony that an agreement was reached for a deduction of \$325.00 from the security deposit. I was provided undisputed documentation including a letter dated March 31, 2010 and the cheque given to the tenant in the amount of \$475.00. I find the preponderance of evidence indicates that the parties had agreed that the landlord would pay the tenant \$475.00 in final satisfaction the security deposit owed the tenant, the installation of the alarm system and damages to the rental unit.

I did not find sufficient evidence to conclude that the landlord did not intend to fulfill the agreement when giving the tenant the cheque in the amount of \$475.00. As stated in the agreement, the settlement was final and I interpret that to mean the settlement would not be open to further negotiation. I find that the landlord did not have the right to cancel the cheque and I uphold the terms of the agreement reached between the parties March 31, 2010. I do not find the failure of the landlord to abide by the terms of the agreement is a basis to void the agreement.

Section 38(1) of the Act requires that a landlord must repay the security deposit to the tenant or make an Application for Dispute Resolution within 15 days of the end of the tenancy or upon receiving the tenant's forwarding address, whichever date is later. It is important to note that section 38(1) is subject to section 38(4) which is the section of the act that permits parties to agree upon deductions in writing. If the landlord fails to comply with section 38(1) of the Act, section 38(6) provides that a landlord must pay the tenant double the security deposit.

In this case, I find the landlord was required to repay the tenant \$475.00 no later than 15 days after receiving the tenant's forwarding address in writing pursuant to section 38(1) of the Act. Alternatively, the landlord had the right to file an Application for Dispute Resolution within 15 days of receiving the tenant's forwarding address to avoid the doubling provision under section 38(6) of the Act. Since the landlord failed to

comply with the requirements of section 38(1) the landlord must now pay the tenant double the \$475.00 owed to the tenant.

Since I have upheld the settlement agreement reached between the parties as permitted by the Act, I find the landlord is now precluded from making a claim for damages against the tenant. Also, in accordance with the settlement agreement, I find the tenant is not entitled compensation for the alarm system and I do not award such costs to the tenant.

As further information for the landlord, the Act does not permit a landlord to require a deposit other than a security deposit or pet deposit. The “utility deposit” required by the landlord is in violation of the Act and recoverable by the tenant. However, as the parties agreed that the BC Hydro bill payable by the tenant was \$213.80 I accept the agreement reached between the parties during the hearing that the tenant would compensate the landlord the difference of \$13.80.

I find the landlord did not take sufficient action to deal with the security deposit in a timely manner and I award the filing fee to the tenant. The tenant is provided a Monetary Order calculated as follows:

Double security deposit (\$475.00 x 2)	\$ 900.00
Less: amount owed for hydro consumption	(13.80)
Plus: filing fee paid for this application	<u>50.00</u>
Monetary Order for tenant	\$ 936.20

The Monetary Order must be served upon the landlord and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was partially successful in this application and has been provided a Monetary Order in the amount of \$936.20.

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: September 21, 2010.

Dispute Resolution Officer