



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC, MNSD

Introduction

This Hearing was scheduled to hear the Tenant's application for a Monetary Order for compensation for damage or loss under the Act and for double the security deposit.

The Tenant provided affirmed testimony at the Hearing.

At the outset of the Hearing, the Tenant testified that she mailed the Landlord the Notice of Hearing documents, via registered mail, on April 22, 2010. The Tenant provided a copy of the registered mail receipt and tracking number in evidence, along with a photocopy of the envelope that contained the Notice of Hearing documents. The documents were returned to the Tenant with a notation that the recipient had refused to accept them.

I am satisfied that the Landlord was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after the documents are mailed regardless of whether or not the recipient chooses to accept delivery. Despite being deemed served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing continued in her absence.

The Tenant testified that she provided the Landlord with copies of her documentary evidence, by registered mail, on August 20, 2010. The Tenant provided the original registered mail receipt for these documents, along with a copy of the envelope containing the documents in evidence. This envelope was also returned to the Tenant "refused by addressee:"

Issues to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss, further to the provisions of Section 67 of the Act?

Is the Tenant entitled to recover double the amount of the security deposit from the Landlord, further to the provisions of Section 38(6) of the Act?

Background and Evidence

The Tenant gave the following testimony:

The rental unit is the basement suite of a house. The Landlord lives in the upstairs suite of the house. There was no written tenancy agreement between the parties. The Tenant paid a security deposit in the amount of \$350.00 on September 30, 2009. Monthly rent was \$700.00, which the Tenant paid on the last day of the month for the following month. The Tenant provided copies of receipts for rent paid and for the security deposit.

The tenancy was uncomfortable from the start. The Landlord intimidated the Tenant by watching her and her guests, berating her for not cleaning the common laundry room, verbally abusing her in front of her family and guests, and threatening to “write something up” against the Tenant. For example, the Landlord monitored the Tenant’s comings and goings and when she had company. The Landlord told her she could not have overnight guests more than one night in a row, and asked the Tenant if her boyfriend was as easy to intimidate as the Tenant was. The Tenant testified that in the 4 ½ months she lived in the rental unit, she had her boyfriend stay 3 times and her brother stay only once.

The Tenant testified the Landlord complained about her doing too much laundry and turned off the hot water to the laundry. The Landlord told her that she could not move her record player cabinet into the rental unit because she had too much furniture. The

Tenant testified that she didn't have too much furniture and felt she had a right to move her own things into her own suite.

The Tenant testified that towards the end of the tenancy, she felt she had to watch her TV with the sound turned off and the captions on so she would not disturb her Landlord.

The Landlord gave her a letter on January 18, 2010, stating that her daughter and grandson would be moving into the basement suite and that she would have to move effective March 6, 2010. The Tenant provided a copy of the letter in evidence.

The Tenant testified that she wanted to move out of the rental unit because she was unhappy, but didn't want to move so soon. The Tenant provided the Landlord with a letter dated February 3, 2010, informing the Landlord that she was vacating the rental unit on February 14, 2010. A copy of this letter was entered in evidence. The Tenant wrote "I may give short notice of a minimum of 10 days according to the Residential Tenancy Act, since I am being asked to leave for landlord use of property." The Tenant included her forwarding address and requested return of her security deposit. The Tenant testified that she personally handed the Landlord the letter on February 3, 2010, with a witness present. The Tenant moved out of the rental unit on February 14, 2010.

The Tenant testified that the Landlord mailed her the security deposit refund on March 2, 2010, and provided a copy of the cheque and envelope in evidence. The Tenant has cashed the cheque.

The Tenant testified that she did not pay any rent for the month of February and moved out on February 14, 2010. Therefore, the Tenant is applying for her compensation for having to move for Landlord's use, in the amount of ½ of a month's rent (\$350.00).

The Tenant is also applying for double the security deposit because the Landlord did not return her security deposit within 15 days of the end of the tenancy, less the amount the Landlord has already paid her (\$350.00)

The Tenant is also seeking compensation for loss of peaceful enjoyment in the amount of \$700.00.

Analysis

Section 67 of the Act states:

Director's orders: compensation for damage or loss

- 67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant provided a written account of the events, including dates, when she felt the Landlord unreasonably disturbed her and/or infringed on her privacy. A tenant is entitled to quiet enjoyment of a rental unit, including a right to reasonable privacy and freedom from unreasonable disturbance. Based on the undisputed testimony of the Tenant, I find that the Landlord did not provide the Tenant with quiet enjoyment, free from unreasonable disturbance, and allow the Tenant's claim in the amount of \$225.00 (\$50.00 per month for the term of the tenancy).

Section 44 of the Act defines the methods by which a tenancy may end. The Landlord did not provide the Tenant with effective notice to end the tenancy (i.e. a Two Month Notice to End Tenancy for Landlord's Use). However, it is clear from the letter the Landlord provided the Tenant that she wished to end the tenancy so that members of her immediate family could move into the rental unit. If the Landlord had complied with the Act and provided the Tenant with proper Notice, the Tenant would have been entitled to compensation under Section 51 of the Act. Such compensation is the equivalent of one month's rent.

Section 50 of the Act allows a tenant to provide a landlord with at least 10 days written notice to end a tenancy earlier than the effective date of the landlord's notice under Section 49 of the Act. The Tenant did not pay rent for the month of February, and moved out in the middle of February, after providing the Landlord with 11 days written notice. I find, pursuant to the provisions of Section 67 of the Act, that the Tenant is

entitled to the compensation she would have been provided had the Landlord complied with the Act and allow this portion of her claim in the amount of \$350.00.

Section 38(1) of the Act provides that, unless the tenant agrees that the landlord may apply any or all of the security deposit towards damages, 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 any security deposit or pet damage deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the Tenant provided her forwarding address to the Landlord on February 3, 2010, and moved out of the rental unit on February 14, 2010. The Landlord did not return the Tenant's security deposit or file an application against it within 15 days of February 14, 2010. Therefore the Tenant is entitled to double the amount of the security deposit, less the amount the Landlord paid on March 2, 2010. No interest has accrued on the security deposit.

The Tenant has established a monetary award, calculated as follows:

Compensation for loss of quiet enjoyment	\$225.00
Compensation for ending the tenancy for Landlord's use	\$350.00
Compensation under Section 38(6)	<u>\$350.00</u>
Total monetary award	\$925.00

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of \$925.00 against the Landlord. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 07, 2010.
