



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for this Application for Dispute Resolution. I decline the Tenant's application to recover the filing fee for the Application for Dispute Resolution, as the Tenant was not required to pay a fee.

It is apparent by the list of claims attached to the Application for Dispute Resolution that the Tenant is also seeking the return of the security deposit for the rental unit. As it is readily apparent that the Tenant is seeking the return of her security deposit, I am amending the Tenant's Application for Dispute Resolution to include a claim to recover the security deposit.

The Tenant stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Landlord on June 08, 2010, June 09, 2010, or June 10, 2010. In the absence of evidence to the contrary, I find that these documents have been served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of the security deposit paid in relation to this tenancy and to compensation for personal property that was discarded by the Landlord.

Background and Evidence

The Tenant stated that this tenancy began on February 01, 2010; that she lived in the rental unit with a co-tenant; that they were required to pay monthly rent of \$850.00; and that they paid a security deposit of \$425.00.

The Tenant stated that she left town on April 22, 2010; that she gave the co-tenant \$425.00 for the rent; that she returned to the rental unit on May 02, 2010 and learned that her co-tenant had moved and all of the Tenant's personal property was missing;

that she contacted the Landlord who advised the Tenant that the co-tenant had left and told the Landlord that she did not know where the Tenant was; that the Landlord told her that she had discarded the Tenant's property; and that the Landlord advised her that the security deposit would not be returned because the rental unit was not cleaned at the end of the tenancy.

The Tenant stated that she does not know whether the co-tenant ended this tenancy in accordance with the Act; that she does not know whether the Landlord has returned any of the security deposit to the co-tenant; that the Landlord has not returned any of the security deposit to the Tenant; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that she does not know whether the co-tenant authorized the Landlord to retain any portion of the security deposit; and that she does not know if the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she did not provide the Landlord with her forwarding address until she served the Landlord with an Application for Dispute Resolution in June of 2010.

The Tenant stated that the Landlord discarded her bed and bedding, which she valued at approximately \$800.00; groceries which she valued at approximately \$150.00; dishes and silverware, which she valued at approximately \$100.00; a desk, which she valued at approximately \$100.00; a bookshelf, which she valued at approximately \$100.00; a television, which she valued at approximately \$200.00; a DVD player, which she valued at approximately \$75.00; and side tables, which she valued at approximately \$100.00.

Analysis

On the basis of the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant and her co-tenant paid a security deposit of \$425.00.

On the basis of the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant did not provide the Landlord with her forwarding address, in writing, until after she filed the Application for Dispute Resolution.

Section 38(1) of the *Act* stipulates 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 either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In the circumstances before me, I find that the Tenant filed an application seeking to recover the security deposit prior to providing the Landlord with her service address. I therefore find that the Tenant filed the application to recover her security deposit prematurely and I dismiss the application to recover the security deposit, with leave to reapply.

Section 26(3) of the *Act* stipulates that a landlord must not seize any personal property of the tenant, whether or not a tenant pays rent in accordance with the tenancy

agreement. Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that sometime between April 22, 2010 and May 02, 2010 the Landlord seized, and disposed of, personal property belonging to the Tenant. I have no evidence to show that the Landlord had the lawful authority to seize or discard the Tenant's property. I therefore find that the Landlord is obligated to compensate the Tenant for any losses that flowed from the Landlord's breach of section 26(3) of the *Act*.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In addition to establishing that the Landlord seized and disposed of personal property belonging to the Tenant, the Tenant must also provide evidence to establish the value of her property.

I find that the Tenant provided insufficient evidence to support her estimate that her discarded bed and bedding was worth \$800.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the items. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of the bed/bedding, which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that these items were only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the items.

I find that the Tenant provided insufficient evidence to support her estimate that her discarded groceries were worth \$150.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the groceries. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of the groceries, which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that the groceries were only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the groceries.

I find that the Tenant provided insufficient evidence to support her estimate that her discarded dishes/silverware were worth \$100.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the items. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of her dishes/silverware which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that these items were only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the items.

I find that the Tenant provided insufficient evidence to support her estimate that her discarded desk was worth \$100.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the desk. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of her desk which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that the desk was only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the desk.

I find that the Tenant provided insufficient evidence to support her estimate that her discarded bookshelf was worth \$100.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the bookshelf. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of her bookshelf which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that the item was only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the item.

I find that the Tenant provided insufficient evidence to support her estimate that her television was worth \$200.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the television. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of her television which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that the item was only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the item.

I find that the Tenant provided insufficient evidence to support her estimate that her DVD player worth \$75.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the item. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of her DVD player which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that the item was only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the item.

I find that the Tenant provided insufficient evidence to support her estimate that her side tables were worth \$100.00. In reaching this conclusion, I was highly influenced by the absence of photographs, receipts or other such documentary evidence that helps establish the value of the tables. On this basis, I award nominal damages, in the amount of \$1.00, for the loss of her tables which simply serves as an affirmation that there has been an infraction of the Tenant's rights. This award does not mean to imply that the item was only worth \$1.00. It simply means that the Tenant has submitted insufficient evidence to establish the true value of the item.

Conclusion

I find that the Tenant has established a monetary claim of \$8.00 in nominal damages and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In an attempt to provide some finality and clarity to this tenancy, I find that the service address noted on the Tenant's Application for Dispute Resolution is her forwarding address for the purposes of returning the security deposit. I further find, pursuant to section 71(2)(b) of the *Act*, that the Landlord is deemed to have been served the Tenant's forwarding address on October 26, 2010, which is five days after this decision is being mailed to Landlord by the Residential Tenancy Branch. I note that a copy of the Tenant's Application for Dispute Resolution is being mailed to the Landlord with the decision, to ensure that the Landlord has the Tenant's forwarding address.

The Landlord and the Tenant are both advised that the Landlord is now obligated to comply with section 38(1) of the *Act* by November 10, 2010, which is fifteen days after the Landlord is deemed to have received the Tenant's forwarding address. In these circumstances, the Landlord must either file an Application for Dispute resolution seeking to retain all or part of the \$425.00 security deposit or she must return the \$425.00 deposit.

The Landlord and the Tenant are both advised that section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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: October 21, 2010.

Dispute Resolution Officer