



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC, MNSD

Introduction

This is the Tenant's application for a Monetary Order for return of a portion of her security deposit (doubled) and for compensation for damage or loss.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary award pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to compensation for loss of peaceful enjoyment of the rental unit?

Background and Evidence

There is a written tenancy agreement between the parties, which is a one year term lease. A copy of the tenancy agreement was entered in evidence.

This tenancy started on August 1, 2009 and ended on October 31, 2009. Monthly rent was \$855.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$430.00 on July 18, 2009.

The Tenant gave the following testimony:

The Tenant agreed that the Landlord could retain a portion of the security deposit at the end of the tenancy. She agreed that the Landlord could retain ½ of the cost of advertising the rental unit, in the amount of \$38.82. She did not agree to any other deductions from the security deposit.

The Landlord returned only \$283.33 of the security deposit.

The Tenant testified that she provided her forwarding address in writing on the bottom of the move out Condition Inspection Report on November 1, 2009.

The Tenant testified that the night she moved into the rental unit her upstairs neighbours had a party. The noise kept her awake. She stated that this was a regular occurrence with her upstairs neighbours, and that they would party until 2:00, 3:00 or 4:00 in the morning. The Tenant testified that she called the Landlord to complain and sent her numerous e-mails but the Landlord did not intervene. The Landlord suggested that she stuff a towel into the air vent in her bedroom to muffle the noise, and to try to work it out directly with the upstairs tenants. The Tenant could not sleep in her bedroom, and moved to the living room and slept on the couch for most of the 3 month tenancy.

The Tenant's witness AS gave the following testimony:

The witness was a co-tenant. Starting sometime in September, 2009, he told the Landlord on several occasions that the upstairs tenants were noisy at night. He told the Landlord that they moved into the living room to sleep to attempt to get away from the noise.

The witness signed a release stating that the Landlord could retain a portion of the advertising costs. The witness was not sure exactly how much he said the Landlord

could retain. The witness did not agree that the Landlord could deduct the cost of her ferry, gardening charges, or a bank fee from the security deposit.

The Tenant's witness AR gave the following testimony:

The witness is a friend of the Tenant's and spent a lot of time at the rental unit or on the phone with the Tenant. The witness was there on a few occasions when the upstairs Tenants had their music on very loudly. On one occasion when the witness was on the phone with the Tenant, the music was so loud the witness could hear it through the Tenant's phone. On another occasion the music was really loud while the witness was at the rental unit. The witness and the Tenant went upstairs to ask the upstairs tenants to turn it down, but no one was home. They had left the music blaring and gone out.

These disturbances happened at all hours of the day and night. One night the witness stayed overnight at the rental unit and the music was blaring until 1:00 or 2:00 in the morning. The music was loudest in the Tenant's bedroom, but could be heard throughout the rental unit.

The witness was with the Tenant shortly after she moved in and heard her call the Landlord and complain about the noise from the upstairs tenants.

The Landlord gave the following testimony:

The Tenant called the Landlord in late August, 2009, and told her about the noise from the upstairs tenants. The Landlord asked the Tenant for more details. The Tenant e-mailed the Landlord on September 9, 2009, providing more details. The Landlord returned the Tenant's email on September 11, 2010, suggesting the Tenant place a towel in the bedroom's heating vent. The Landlord also suggested that the Tenant try to work it out with the upstairs tenants and that if it still persisted to let her know and she would step in. The Landlord advised the Tenant that she would not hold the Tenant to

the lease contract if the Tenant wanted to move, as long as the Tenant gave her one month's notice.

The Landlord also received complaints from the upstairs tenants about the Tenant fighting with her co-tenant.

The Landlord gave the upstairs tenants a verbal warning and then heard nothing more about it. She thought the problem was resolved. The Landlord denied knowing that the Tenant was sleeping in the living room until the end of the tenancy.

Analysis

This is the Tenant's application. The Landlord has not filed an application and therefore I will not consider her alleged damages at the end of the tenancy.

Section 38(1) of the Act provides that (unless a tenant gives written permission for the landlord to retain any or all of the security deposit) 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. No interest has accrued on the security 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.

The Landlord did not repay the security deposit, or file an application against the security deposit within 15 days of receiving the Tenant's forwarding address in writing. I grant the Tenant a monetary award in accordance with the provisions of Section 38(6) of the Act, calculated as follows:

Security deposit paid	\$430.00
Less amount Tenant agreed the Landlord could retain	<u>-\$38.82</u>
Residue	\$391.12
Residue doubled pursuant to Section 38(6) of the Act	\$782.36
Less amount returned by Landlord	<u>-\$283.33</u>
Balance owed by the Landlord to the Tenant	\$499.03

Both parties provided a copy of an e-mail written September 9, 2010 by the Tenant and an e-mail written September 11, 2010 by the Landlord. The Landlord testified that she first heard about the loud music when the Tenant called her at the end of August. In the Tenant's e-mail of September 9, 2010, she writes, in part:

When we first moved in it was a Saturday.... Around 3 am music started and Im guessing that [the upstairs tenants] came home with people and were stomping around and being loud.

[The co-tenant] has to be awake Monday-Friday at 7am. the music and the stomping until 1am or so keeps us both awake, and it doesn't just happen on the weekends.

..... This happens way too often and I don't think that when I have my son Im going to be able to handle the loudness of the people upstairs. They know that there is no insulation upstairs and **we have asked them a few times to move into a different room if they are going to be awake and listening to music or whatever they are doing.**

For example: Labour Day weekend: Thursday they had a few guys over. They left theyre music on until about 2am. On Friday.... They go to the bar and left their music blaring when they werent even home..... I finally fell asleep around 1:30 and then got woken up by them at 3. This continued for Saturday, and they have had people over until today. Even lastnight I got woken up at 3am..... **This happens all the time, it happens EVERY weekend. It even happens during the week.**

(reproduced as written, emphasis added)

I accept the Tenant's and her witness's testimony that the Landlord was advised repeatedly about the noise disturbance coming from the upstairs tenants.

A tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. I find that the Tenant was unreasonably disturbed repeatedly by the upstairs tenants and that the Landlord did nothing to provide the Tenant with quiet enjoyment. I find that the Tenant has suffered a loss as a result of the Landlord's neglect and I award her \$427.50 in compensation for her loss (25% rent abatement for the months of September and October).

I hereby provide the Tenant with a Monetary Order against the Landlord in the amount of \$926.53.

Conclusion

Pursuant to Sections 38(6) and 67 of the Act, I grant the Tenant a monetary order for \$926.53 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: October 27, 2010.
