



Dispute Resolution Services

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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 in compensation for damage or loss under the Act, regulation or tenancy agreement. The Tenant's application was amended on July 21, 2010, to include a claim for double the amount of the security deposit.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents to the Landlords at the address provided by the Landlords on the tenancy agreement. The Tenant testified that he sent the documents by registered mail, on June 26, 2010. The Tenant provided a copy of the registered mail receipt and tracking number in evidence.

The Tenant testified that she mailed his amended application to the Landlords at the address provided by the Landlords on the tenancy agreement. The Tenant testified that he sent the documents by registered mail, on July 22, 2010. The Tenant provided a copy of the registered mail receipt and tracking number in evidence.

Based on the Tenant's affirmed testimony and the documentary evidence, I am satisfied that the Landlords were served with the Notice of Hearing documents and the Tenant's amended application pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the documents, the Landlords did not sign into the conference and the Hearing continued in their absence.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a monetary order for double the security deposit and compensation for repairs required but not provided?

Background and Evidence

The Tenant gave the following testimony:

The parties entered into a tenancy agreement on May 23, 2009. A copy of the tenancy agreement was entered in evidence. The tenancy was for a fixed term, commencing July 1, 2009 and ending June 30, 2010. Monthly rent was \$1,950.00 due on the first day of each month. The tenant paid a security deposit in the amount of \$975.00 on May 23, 2009.

The Tenant moved out of the rental unit at the end of June, 2010, and provided the Landlords with written notification of his forwarding address on June 26, 2010, by registered mail. The Tenant provided a copy of his written notification in evidence, along with the receipt and tracking number.

The Tenant did not give the Landlords written permission to retain any of the security deposit. The Landlords have not returned any portion of the security deposit to the Tenant.

The rental unit was advertised a 751 sq. ft. "executive" style condominium with 2 bathrooms, one bedroom and a den. The Tenant was the first person to occupy the rental unit.

When the Tenant moved into the rental unit there were a number of deficiencies. Only one of the two showers worked; the garburator was not functional and would back up into the kitchen sink when the dishwasher was operating; there were cracks in the walls

and pulls on the new carpet; no baseboards in one of the bathrooms; and there were no light fixtures in the living room. There were other minor deficiencies as well. The Landlords were out of the country, so the Tenant advised the Landlords' agents of the problems several times and asked that they be remedied. The Tenant heard nothing from the Landlords until May 6, 2010, when the Landlord MT sent the Tenant an e-mail apologizing for being out of the country for a year, and inviting the Tenant to call him to set up a meeting to discuss the deficiencies. A copy of the e-mail was entered in evidence. None of the repairs were done during the term of the tenancy.

The Tenant is applying for rent abatement in the amount of 25% for the term of the tenancy.

The Tenant also seeks to recover his costs for the registered mail documents and the cost of developing the photographs.

Analysis

Based on the affirmed testimony and documentary evidence provided by the Tenant, I am satisfied that the Landlords received the Tenant's forwarding address in writing on July 1, 2010 (five days after mailing the document to the Landlords).

Section 38(1) of the Act provides 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** 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.

The Landlords have not filed an application against the Tenant's security deposit, nor have they returned the security deposit to the Tenant.

Therefore, pursuant to the provisions of Section 38(6) Act, I grant the Tenant a monetary award in the amount of \$1,950.00 (double the amount of the security deposit).

Based on the affirmed testimony and documentary evidence of the Tenant, and in the absence of any evidence to the contrary from the Landlord, I am satisfied that the Landlord did not attend to the deficiencies and that the Tenant has suffered a loss as a result. The Tenant did not have use of one of the showers or the garburator during the tenancy. I allow the Tenant's claim in the amount of \$4,680.00 (20% of the rent for the term of the lease).

The Tenant's application to recover the costs of the registered mail and photographs is dismissed.

I hereby provide the Tenant with a Monetary Order in the amount of \$6,630.00.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of \$6,630.00 against the Landlords. This order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated: November 25, 2010.
