



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement;
2. Recovery of the security deposit; and
3. Recovery of the filing fee paid for this application.

Total Monetary Award sought: \$13,911.03

Both parties appeared the hearing of this matter and gave evidence under oath.

Issues(s) to be Decided

Is the tenant entitled to the orders sought?

Summary of Background and Findings

With respect to the tenant's claim for compensation for damage or loss, the tenant submits that these claims arise from several issues: breach of the rental contract, a hidden rent increase, damage caused by the landlord to the tenant's personal property, an invasion of her privacy and vexatious mischief caused by the landlord to the tenant and, because the security deposit in the sum of \$250.00 paid June 1, 1990 had not been returned to her.

In a previous application made by the tenant and heard on October 19, 2009 the parties agreed to settle the matters between them and end this tenancy as of April 30, 2010. Now the tenant wishes to make claims for what amounts to numerous losses that she said occurred during this 20 year tenancy.

With respect to this portion of the tenant's claim I find that the doctrine of laches must be applied to bar her claim. Laches is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the tenant's inordinate delay in asserting her claim and the manifest prejudice to the landlord that has resulted from their failure to make a timely objection warrants the denial of this claim.

With respect to recovery of the security deposit the tenant testified that she paid a security deposit of \$250.00 on June 1, 1990. The tenant testified that she provided her forwarding address to the landlord for the purposes of the return of her security deposit on April 30, 2010 but the landlord has still not returned the deposit.

The landlord agrees that he received the tenant's forwarding address and agrees he has not returned the deposit. The landlord submitted that he did not return the deposit because he does not respond to post office box numbers which was what the tenant supplied to him.

With respect to the security deposit Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause. With respect to the landlord's submission that he did not return the deposit because he found the address lacking as it was only a Post Office Box number, it does not matter the type of address supplied and a tenant does not have to reside at the forwarding address. All the Act requires is that the tenant supply a forwarding address.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on June 1, 1990	\$250.00
Double Security Deposit	250.00
Interest on original amount only from June 1, 1990 top the date of this Order	132.27
TOTAL MONETARY AWARD	\$632.27

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.