



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, compensation for damage or loss under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act and to recover the filing fee for this proceeding..

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 30, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is the Tenant entitled to compensation for damage or loss and if so how much?
3. Has the Landlord complied with the Act?

Background and Evidence

This tenancy started on December 1, 2000 as a month to month tenancy. The tenancy ended July 31, 2008. Rent was \$680.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 and a garage opener deposit of \$50.00 on November 15, 1996.

The Tenant said that she moved out of the rental unit on July 29, 2010 and gave the Landlord a forwarding address in writing on July 28, 2010. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that she cleaned the unit and did some paint touch ups on the walls of the unit before leaving and she asked the Landlord for her deposit back. She said the Landlord said he would send her the security deposit in the mail. The Tenant said the Landlord did not send her the security deposit or any communications. As a result she contacted the Residential Tenancy Branch and made an application for dispute resolution. The Tenant also said to her knowledge the Landlord has not made an application to the Residential Tenancy Branch to retain her security deposit.

The Tenant continued to say that the Landlord did not give her any rent compensation as indicated in the Act when a Landlord issues a 2 Notice to End Tenancy for the Landlord's use of a unit. The Tenant said she is applying for the equivalent of one month's rent of \$680.00 as compensation.

In addition the Tenant said that she has been in contact with the previous building managers, who are in contact with a number of the other tenants in the building and they told the Tenant that their old unit was rented out on November 1, 2010 to a regular tenant not a building manager as stated in the Notice to End Tenancy issued by the Landlord dated May 31, 2010. As a result the Tenant said she is applying for compensation of the equivalent of 2 months' rent ($2 \times \$680.00 = \$1,360.00$) as the Landlord did not use the unit for the reason they evicted her for.

The Tenant said she left the unit in better condition than when she moved into it in 1996.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from that the Tenant did give the Landlord a forwarding address in writing on July 28, 2010 and was moved out on July 29, 2010. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy and receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant double the security deposit of \$325.00 and the garage opener deposit of \$50.00 plus accrued interest of \$51.07 from November 15, 1996 to January 31, 2011 in the amount of $\$426.07 \times 2 = \852.14 .

Section 51 says a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find from the Tenant's testimony that the Landlord did not compensate the Tenant the amount equivalent to one month's rent for issuing a Notice to End Tenancy for the Landlord's Use and as a result of the Landlord not complying with the Act, I award the Tenant \$680.00 as compensation pursuant to section 51 (1) of the Act.

In addition I accept the Tenant testimony that the Landlord did not use the unit for the stated purpose in the Notice to End Tenancy dated May 31, 2010, consequently I find for the Tenant and grant an additional \$1,360.00 which represents 2 month's rent as compensation pursuant to section 51(2) of the Act for a Landlord not using the rental unit for the stated purpose in the Notice to End Tenancy.

As the Tenant was successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 38, 67 and 72 a monetary order for the following will be issued to the Tenant.

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|---|-------------------|
| Double the Security Deposit and interest | \$ 852.14 |
| One month's rent for the Notice to End Tenancy for Landlord's Use. | \$ 680.00 |
| Double one month's rent for Landlord not complying with Notice to End Tenancy | \$1,360.00 |
| Filing Fee | <u>\$ 50.00</u> |
| Balance Owing | <u>\$2,942.14</u> |

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$2,942.14 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: January 31, 2011.

Residential Tenancy Branch