

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This is the Tenant's application for compensation in the equivalent of one month's rent; return of the security deposit; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

The Tenant testified that he sent the Notice of Hearing documents to the Landlord to the address she gave, via registered mail, on July 29, 2010. The documents were returned to the Tenant unclaimed, so he e-mailed her the documents on August 23, 2010, along with his forwarding address.

The Landlord provided evidence to the Residential Tenancy Branch on December 13, 14, and 15, and e-mailed the documents to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence.

Issue(s) to be Decided

Is the Tenant entitled to compensation pursuant to the provisions of Sections 51 and 38 of the Act?

Background and Evidence

The rental unit was rented to 4 tenants, including the Tenant, on May 1, 2009. Monthly rent was \$2,400.00. The Tenants paid a security deposit in the amount of \$1,200.00 at the beginning of the tenancy.

The tenancy ended on April 30, 2010, as a result of the Landlord verbally advising the Tenant that she was selling the property and the lease would not be renewed. Neither party provided a complete copy of the tenancy agreement in evidence. The Tenant testified that the tenancy agreement was a term lease, but would become a month to month tenancy at the end of the term. The Landlord's agent testified that the lease was a term lease and at the end of the term the Tenants were required to move out of the rental unit.

The Tenant testified that the Tenants did not wish to move but believed they had to move out and were not aware they had any options. The Tenant seeks compensation

in the amount of \$2,400.00 representing the amount the Tenants would be due under Section 51(1) of the Act.

The Landlord's agent stated that no Notice to End Tenancy for Landlord's Use was issued because the lease ended on May 1, 2010. The Landlord's agent stated that the Tenant had not proven that the tenancy could revert to a month-to-month tenancy at the end of the term.

The Landlord's agent stated that, although the Tenants did not initial in the space provided to indicate that they would have to move out at the end of the term, the Landlord did initial in that space. The Landlord's agent submitted that there was sufficient evidence to show that the Landlord intended to end the tenancy at the end of the term and that it was reasonable to assume this was communicated to the Tenants when they signed the lease.

The Tenant also seeks return of the security deposit paid to the Landlord, pursuant to the provisions of Section 38 of the Act. The Tenant testified that there was no condition inspection completed at the beginning or the end of the tenancy. The Tenant testified that he did not agree that the Landlord could retain any of the security deposit and that none of the security deposit had been returned to him, or to the other Tenants.

The Landlord's agent submitted that the Tenant was only one of 4 tenants, and therefore his portion of the security deposit was only \$300.00. The Landlord's agent stated that the Tenants left the rental unit in need of repairs and cleaning at the end of the tenancy, the cost of which was more than the security deposit.

The Tenant testified that he was acting on behalf of all of the tenants, that all communications with the Landlord came through him, and that the rent was always paid through his account.

Analysis

Section 51 of the Act provides for compensation in the equivalent of one month's rent to "a tenant who **receives a notice to end a tenancy under section 49** [landlord's use of property]". In this case, no notice to end tenancy was issued. I find that there was a mutual end of tenancy agreement between the parties and this portion of the Tenant's application is dismissed.

The Landlord entered into a single tenancy agreement with 4 tenants. Therefore, I find that the Tenant was a co-tenant with the other three tenants. Co-tenants are jointly and severally liable for damages and also jointly and severally entitled to compensation under a tenancy agreement. The Landlord's agent submitted that the Tenants left

damages at the rental unit, however the Landlord has not filed an application for damages against one, or any, of the Tenants and is at liberty to do so.

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.

I find that the parties had established e-mail as a method of communicating with each other. The Tenant provided the Landlord with his forwarding address on August 23, 2010. The Landlord has not filed an application against the security deposit, or returned the security deposit to the Tenant.

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.

I find that the Landlord has not complied with Section 38(1) of the Act and therefore must pay the Tenant double the amount of the security deposit. No interest has accrued on the security deposit.

The Tenant has been partially successful in his application and is entitled to recover the filing fee from the Landlord.

I grant the Tenant a monetary award, calculated as follows:

Double the security deposit	\$2,400.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$2,450.00

Conclusion

I hereby provide the Tenant a Monetary Order for \$2,450.00 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.



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 04, 2011.
