



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and for monetary compensation for damage or loss under the Act, regulations or tenancy agreement.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on or about October 25, 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 with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is the Tenant entitled to monetary compensation for loss or damage and if so how much?

Background and Evidence

This tenancy started on September 1, 2009 as a month to month tenancy. The tenancy ended September 6, 2010. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on September 1, 2009.

The Tenant said that he moved out of the rental unit on September 6, 2010 and gave the Landlord a forwarding address in writing on September 27, 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 before leaving and she asked the Landlord for her deposit back. She said the Landlord said there was cleaning to be done and the rent for August, 2010 of \$1,200.00 and part of the rent for July, 2010 of \$400.00 was not paid therefore the Landlord said she would not return the security deposit. The Tenant said the rent for July and August was paid in full.

The Tenant continued to say that the Landlord issued a Notice to End Tenancy for the Landlord’s use of the property on July 20, 2010 with an effective vacancy date of

September 30, 2010. The Tenant said that she has applied for monetary compensation of the equivalent of one month's rent in the amount of \$1,200.00 as described in section 49 of the Act as compensation for a Notice to End Tenancy for the Landlord's use of the property.

The Landlord said she did not return the security deposit to the Tenant because the Tenant did not pay the rent for part of July, all of August and September, 2010. The Landlord said she did not have any evidence that the rent was unpaid.

The Tenant said that the August rent was paid less \$440.00 which the Tenant paid to have the water heater repaired. The Tenant said this rent reduction was agreed to by the Landlord's husband. The Tenant submitted a bill from the repair man for the repairs. The Tenant continued to say that the Ministry paid \$660.00 of her rent each month and she paid the balance in cash to the Landlord. The Tenant said she is suffering health issues from a car accident and as a result she could not remember if she paid the September, 2010 rent. The Tenant's advocate said they had no record of the September rent being paid as the Tenant only lived in the unit until September 6, 2010.

The Landlord said she did receive a forwarding address in writing from the Tenant on September 27, 2010 and she did not return the deposit or make an application with the *Residential Tenancy Branch* to retain the security deposit.

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 September 27, 2008. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$600.00 in the amount of $\$600.00 \times 2 = \$1,200.00$.

With respect to the Tenant's application for compensation under section 49 of the Act for the equivalent of one month's rent in the amount of \$1,200.00 because the Landlord issued a 2 Month Notice to End Tenancy for the Landlord's use of property. Under this section of the Act the Landlord can give the tenant the last month of the tenancy free or monetary compensation for the equivalent of one month's rent. Since the Tenant did inhabit the rental unit until September 6, 2010 and the effective vacancy date on the Notice to End Tenancy was September 30, 2010, I find the Tenant did have possession of the unit for September, 2010. Consequently, I find that there was rent of \$1,200.00 due for September, 2010 from the Tenant. I accept the Landlord's testimony that the Tenant did not paid the September, 2010 rent of \$1,200.00 therefore, I find that the unpaid rent of \$1,200.00 for September will be use to satisfies the requirement of the Act under section 49(one month's rent compensation for a Notice to End Tenancy for the Landlord's use). I deem the Tenant did receive one month rent free for September, 2010 as required by the Act. I dismiss any further claim by the Tenant for compensation under section 49 of the Act.

As the Tenant was partially successful in this matter, pursuant to sections 38 and 67 a monetary order for \$1,200.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$1,200.00.

Conclusion

I dismiss the Tenant's monetary claim for one month's rent of \$1,200.00 for compensation as a result of the 2 Month Notice to End Tenancy for the Landlord's use of the property.

I find in favour of the Tenant's monetary claim, pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$1,200.00 to the Tenant for double the security deposit. 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*.

Residential Tenancy Branch