



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDS FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on November 12, 2010. Canada Post receipts were provided in the Tenant's evidence. The Landlord signed for the package on November 23, 2010 as supported by the Tenant's evidence.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective on approximately January 8, 2010 and was set to switch to a month to month tenancy after one year, (January 2011). Rent was payable on the first of each month in the amount of \$1,700.00 and the Tenant paid \$1,000.00 as a security deposit on January 6, 2010. A move-in inspection report was completed on approximately January 8, 2010.

The Tenant testified that she provided the Landlord verbal notice to end her tenancy when she informed his wife on January 1, 2010 and again on February 1, 2010 that she would be moving out of the unit. She vacated the property sometime during the last week of February 2010 and returned to clean the unit. She returned the keys with her written forwarding address to the Landlord's office and handed them to the Landlord's wife who was sitting at the reception desk that morning.

She stated that when they began to have problems with the lower tenants complaining about their music they had a verbal agreement with the Landlord that they could break their lease and end their tenancy. She had made several attempts to get her security deposit back and sent a letter with her forwarding address to the Landlord on September 27, 2010. He refused delivery of the registered mail so her Advocate sent him a letter on October 20, 2010 which he signed for.

The Landlord testified and confirmed that to date he has made no application for dispute resolution to keep the security deposit, he does not have an Order granting him authority to keep the security deposit, and he does not have the Tenant's written permission to keep the security deposit.

He stated that he did however enter into a verbal agreement with the Tenant, on her porch on January 27, 2010, to allow her to break her lease and move out early and if he was not able to re-rent the unit he would be able to keep the security deposit to cover his loss of rent. He confirms there were problems with noise complaints coming from the downstairs tenants so to resolve the issue he was letting the Tenant move out before the end of her lease. He states he did not receive the keys back from the unit until March 18, 2010.

A discussion followed whereby the parties attempted to settle this matter. When they were not able to agree on a settlement the parties requested that I proceed with issuing my decision based on the application before me.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The Landlord has confirmed that he has not applied for dispute resolution to keep the security deposit, he does not have an Order allowing him to keep the security deposit, and he does not have the Tenant's written consent to retain the security deposit.

The evidence supports that the Tenant provided the Landlords with her forwarding address in writing on September 27, 2010 via registered mail. The Landlord is deemed to have received this letter October 2, 2010, five days after it was mailed, in accordance with Section 90 of the Act. When the Landlord refused the registered mail the Advocate sent another letter on October 20, 2010, which the Landlord signed for on October 27, 2010. The Tenant ended the tenancy sometime between February 28, 2010 and March 18, 2010.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than the latest date of November 1, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest.

The Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double the security deposit (2 x \$1,000.00)	\$2,000.00
Interest Owed on the security deposit	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$2,050.00

I have included a copy of "A Guide for Landlords and Tenants in British Columbia" with my decision and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$2,050.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial 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: March 16, 2011.

Residential Tenancy Branch