



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD MNDC

Introduction

This hearing convened on March 28, 2011, and again for the present session on April 13, 2011. This decision should be read in conjunction with my interim decision of March 21, 2011.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(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 verbal tenancy agreement effective August 2010. Rent was payable on the first of each month in the amount of \$400.00. The Tenant paid a total of \$200.00 towards a security deposit with \$150.00 being paid on August 6, 2010 and the remaining \$50.00 being paid sometime during the month of September 2010.

The Tenant testified she vacated the property October 13, 2010 because of issues of mold in her apartment. She stated she was seeking the return of her \$200.00 security deposit, the return of rent for September and October 2010 (2 x \$400.00), and \$200.00 for moving expenses. The Tenant was not able to provide testimony of how the remaining \$1300.00 was determined but she did say it was for punitive damages, loss of personal property, and out of pocket expenses for having to pay her boyfriend to stay at his place between mid October and December 10, 2010.

The Landlord testified and confirmed he did not have an Order authorizing him to keep the security deposit, he has not made an application for dispute resolution to keep the security deposit, and he does not have the Tenant's written permission, at the end of the tenancy, allowing him to keep the security deposit. He stated that he was very confused about what his rights are because he has been to three different hearings now with this Tenant.

The Landlord confirmed the tenancy agreement was verbal and stated the Tenant wanted to move into the unit before he had finished the renovations. He did not know the exact date the Tenant moved out because she did not provide him with notice to end her tenancy and there was no rent paid for October or November 2010. He states the Ministry paid the Tenant's August and September rent. He states that when he inspected the unit, after the Tenant had moved out, he had found the heat was turned off and there was only a "bit of mold" in the window sill and in the bathroom. He washed away the mold and it has never returned.

The Landlord stated that the Tenant allowed her son to enter the rental unit and he damaged the hallways by punching holes in the walls. Her son was eventually taken away by police. He advised he has held onto the security deposit to pay for the damages caused by her son.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

The Landlord has not applied for dispute resolution to keep the security deposit, 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 the Tenant vacated the property sometime in October 2010 and based on the previous dispute resolution hearing on November 17, 2010, the Landlord was provided the Tenant's forwarding address on November 17, 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 December 2, 2010; he did neither.

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 for the return of double her security deposit and I award her **\$400.00** (2 x \$200.00) plus interest of \$0.00.

The remainder of the Tenant's claim was supported by her written statement. There was no documentary evidence such as proof of the presence of mold inside the rental unit; proof she requested repairs, in writing; proof of the actual cost of items that allegedly had to be thrown away; nor was there evidence to prove she was not able to reside in the unit for two months. The Tenant did provide a copy of a note from her doctor that states she "complains of shortness of breath and upper respiratory symptoms which could be related to mould exposure". I do not find this note to be sufficient evidence to prove that the Tenant was diagnosed with an issue relating to mold exposure or that this alleged exposure was from her rental unit.

In the presence of the Landlord's opposing testimony, I find there to be insufficient evidence to meet the burden of proof that the Landlord breached the *Act*. Therefore I find there insufficient evidence to meet the test for proof of damage or loss, as listed

above, and I hereby dismiss the remainder of the Tenant's claim, without leave to reapply.

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

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$400.00**. This Order must be served on the Respondent Landlord and may be filed in Provincial Court and enforced 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: April 13, 2011.

Residential Tenancy Branch