



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; for return of the portion of the security deposit retained by the Landlord; and recovery of the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Tenant entitled to a monetary award for loss of peaceful enjoyment?
- Is the Tenant entitled to return of the portion of the security deposit that was kept by the Landlord?

Background and Evidence

This tenancy started on December 1, 2008. Monthly rent at the beginning of the tenancy was \$1,200.00, due on the first day of each month. Rent was reduced to \$1,000.00 per month in July or August of 2009. Rent did not include utilities. The Tenants paid a security deposit in the amount of \$600.00 on December 1, 2008. The tenancy ended on November 30, 2010.

The Tenant gave the following testimony:

In August, the Landlord listed the rental unit for sale. The Tenant was maintaining two residences at the end of the tenancy, one of them being in a different town. One day

she returned from her out-of-town residence to the rental unit to find that a lock box had been placed on her door. She had to climb through a window to gain access.

Realtors would request access on short notice and at first it was not a problem and the Tenant agreed to provide access. In November, the Tenant told the Landlord that she required formal written notice of any viewings. The Tenant also required 3 days notice because the Notices were being posted to her door and she believes the Act states that documents provided in this manner are deemed to be received 3 days after posting. The Landlord, or the Realtors, continued to post the Notices to the door for viewings which were scheduled the following day. The Tenant agreed to some of the viewings in November but there were two towards the end of the month that she did not agree to and for which insufficient Notice was given (posted on the door the day before the scheduled viewing).

There was no Condition Inspection Report completed at the end of the tenancy. The Tenant provided the Landlord with her forwarding address in writing on November 30, 2010. The Landlord returned \$300.00 to the Tenant on December 7, 2010. The Tenant did not agree that the Landlord could keep any of the security deposit. There have been no previous Orders made with respect to the security deposit.

The Landlord gave the following testimony:

The Landlord told the Tenant that he had to sell the rental unit and he believes Notices of the viewings were provided in accordance with the requirements of the Act.

The Landlord returned a larger portion of the security deposit to the Tenant than she was entitled to, given the damage the Tenant caused to the rental unit and the fact that it required cleaning and fumigating for fleas.

Analysis

Unless a tenant gives permission, the Act requires at least 24 hours written notice of a landlord's intent to exercise his right to enter a rental unit. A document posted on a door is deemed to be received 3 days after posting the document. However, the Tenant did not provide sufficient evidence to establish a claim for loss of peaceful enjoyment. The Tenant seeks compensation for loss of enjoyment for the months of August through to November, but she testified that she had agreed to allow viewings in August, September, October and most of November. This portion of her claim is dismissed.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord received the Tenant's forwarding address in writing on November 30, 2010. The Landlord did not return all of the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

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. I find that the Landlord did return \$300.00 of the security deposit within the 15 days allowed. Therefore, the Tenant is entitled to a monetary order for double the residue of the security deposit, in the amount of \$600.00, plus accrued interest on the original deposit in the amount of \$.76.

The Landlord gave testimony and documentary evidence suggesting that he had a claim for damages against the Tenant. The Landlord has not filed an application for damages and is entitled to do so, should he desire.

The Tenant has been partially successful in her application and is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$650.76 for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 14, 2011.

Residential Tenancy Branch