



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for a Monetary Order for the return of the security deposit; and to recover the filing fee associated with this application.

By the landlord: as a cross application for a Monetary Order for damage to the unit and to keep the security deposit; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. There was no written tenancy agreement. The tenancy started month to month in April 2010. The rent was \$1000.00 and the tenant paid a security deposit of \$500.00. Condition inspection reports were completed at the start and the end of the tenancy; however the reports were not completed in accordance with the regulations.

The landlord testified that during the tenancy the parties agreed to set the temperature at 20 degrees Celsius. She stated that the tenant brought an additional heater that kept overloading the circuit. She said that the tenant broke the bathroom glass door, that she did not clean the sink and toilet, and left garbage behind.

In her documentary evidence, the landlord provided 47 photographs of the unit with receipts to support a monetary claim as follows:

- Outstanding utilities:	\$ 132.49
- Damaged bathtub glass door:	\$ 325.00
- Repair stove top fan screen:	\$ 200.00
- Cleaning:	\$ 250.00
- Garbage removal:	\$ 50.00
- HST:	\$ 95.00
- Repair electrical breaker:	\$ 138.00
- Missing shoe rack:	\$ 10.00
- Sub-Total:	\$1200.49
- Less security deposit:	\$ 500.00
- Total:	\$ 700.49

The tenant testified that the basement suite was colder than the upstairs portion of the house, and that she had to purchase an additional heater to stay warm.

She stated that she removed the bathroom glass door because it was shaking, old, and did not feel secured in its track; she said that she notified the landlord but that the problem was never addressed. She said that she cleaned the unit while the landlord watched and kept telling her that it was not clean enough, and that she did not break anything. The tenant said that the parties mutually agreed to end the tenancy on September 15th, 2010, and that she had found a new tenant to take over the tenancy. The tenant said that she gave the landlord her forwarding address, and that by September 30th, 2010 she still had not received the security deposit.

The landlord replied that she expected the tenant to wear a sweater if it was too cold in the basement. Concerning the return of the security deposit, she said that she sent it to the tenant's forwarding address within 10 days, but that it was returned to her undelivered.

Analysis

The landlord's notice of dispute resolution is dated June 3rd. 2010, more than 3 months before the tenancy actually ended. The landlord suggested that she meant 2011; however her application was received at RTB on April 6th, 2011 and makes that theory equally questionable as to when in fact the landlord completed her application. The landlord had no explanation; she had no evidence to support sending the tenant her security deposit within 15 days and stated that she had moved since the filing of the dispute and had misplaced certain documents. Given these discrepancies with the dates and the landlord's failure to clarify during the hearing, I accept the tenant's testimony that she did not receive the security deposit with the allowed time frame.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit. Accordingly I find that the tenant is entitled to a monetary order for \$1000.00.

The onus is on the landlord to prove her claim for damage or repairs against the tenant. Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports in accordance with the regulations on the landlord. The reports that the landlord provided did not comply with the regulations, in particular the one completed at the start of the tenancy: it did not specify details such as; the address of the unit being inspected; the date on which the tenant is entitled to possession of the rental unit; and the state of repair or condition of each room in the rental unit. Neither report included a statement in which the tenant agreed or disagreed with the condition of the unit, nor were they signed by both parties. Therefore I do not find the reports reliable; the landlord's testimony on the date the photographs were taken was also vague and there is insufficient evidence to support the landlord's claim that the damage or loss was beyond reasonable wear and tear.

Concerning the landlord's claim for utilities, the move-in condition report stated that heat was included in the rent. I do not find that the landlord proved, on a balance of probabilities, that the tenant owed for unpaid utilities and I dismiss this portion of her claim. Section 13(1) of the Act states in part that the landlord must prepare every tenancy agreement in writing; in the absence of specific breaches of the agreement, a remedy for the landlord would have been to seek assistance through RTB or through

dispute resolution as the problems with the tenant occurred. The parties chose to end the tenancy and I find insufficient evidence to support the landlord's claim.

Concerning garbage removal, I accept that the City of Vancouver did not remove the tenant's garbage. The tenant was responsible to remove her garbage and I find the landlord entitled to recover that expense.

Conclusion

Since both applications had merit, I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application. The landlord established a claim of \$50.00 and under her application the tenant established a claim of \$1000.00.

Pursuant to section 72 of the Act I set off the amount awarded to the landlord against the amount awarded to the tenant and I grant the tenant a monetary order for the balance of \$950.00.

This Order may be registered in the Small Claims 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: June 13, 2011.

Residential Tenancy Branch