



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application. The details of the dispute also include an application for compensation agreed to by the parties as an agreement to end the tenancy.

The tenant attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. The named landlord did not attend the hearing, but was represented by an agent, a relative of the named landlord, who also gave affirmed testimony.

The landlord's agent testified that the landlord was not served with the Tenant's Application for Dispute Resolution or notice of hearing documents within the time set out in the *Residential Tenancy Act* and Rules of Procedure. He stated that the landlord received an evidence package from the tenant on June 9, 2011 and he has not had an opportunity to prepare for this hearing. His application for an adjournment of this hearing is opposed by the tenant. The tenant provided evidence that a registered mail package was sent to the landlord at the landlord's address on the Tenant's Application for Dispute Resolution and a receipt from Canada Post shows that the mail was sent on March 6, 2011. A copy of that receipt is on the same paper as the photocopy of the photographs from London Drugs and on the Government Agent Revenue Management System Transaction Receipt.

The *Residential Tenancy Act* states that an applicant must serve the respondent with the application for dispute resolution within 3 days of making it. The application was filed on March 3, 2011 and the landlord was served by registered mail on March 6, 2011 which is within 3 days. I am satisfied in the evidence that the tenant has served the landlord within the time required under the *Act* and the Rules of Procedure, and the adjournment is not granted.

All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of all or part of the pet damage deposit or security deposit?

Is the tenant entitled to any other relief under the *Residential Tenancy Act*?

Background and Evidence

This month-to-month tenancy began on October 1, 2008 and ended on February 24, 2011. The parties disagree on the amount payable; the tenant stated that rent in the amount of \$800.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The landlord's agent testified that rent was increased to \$825.00 commencing December 1, 2010 and there are rental arrears in the amount of \$825.00 for February, 2011. On October 1, 2008 the landlord collected a security deposit from the tenant in the amount of \$400.00. No move-in condition inspection report was completed at the commencement of the tenancy, however the tenant testified that a move-out condition inspection report was completed on loose-leaf paper by the landlord, but was illegible and the tenant could not read it.

The tenant also testified that the landlord did not return the security deposit once the tenancy ended, and the tenant did not authorize the landlord to keep any portion of it, however the tenant did not provide the landlord with a forwarding address in writing. The tenant testified that a threat was received by a relative of the landlord, the landlord's agent, who does not live on the property, and therefore no address was provided.

On or about January 28, 2011 the landlord approached the tenant for the second time asking the tenant to move out of the rental unit. The first time was in December, 2010 at which time the landlord offered the tenant \$2,000.00. In January, 2011 the landlord offered the tenant \$1,600.00 and the tenant agreed. The parties signed an agreement to that effect, a copy of which was provided for this hearing.

A previous hearing was held on July 7, 2010 under file no. 755729 wherein the tenant was granted rent abatement in the amount of \$30.00 per month for loss of use of the rental unit, as well as an additional \$20.00 per month until repairs were completed.

The tenant further testified that a written tenancy agreement was not prepared on a pre-printed form. The tenant stated that the named landlord and his wife rented the unit to him, and they lived in the upper unit of the house.

The landlord's agent testified that the landlord is 70 years old and can hardly walk. The landlord offered the tenant \$2,000.00 to move, but the tenant refused. At a later date, the tenant and a friend approached the landlord and the landlord signed the agreement for \$1,600.00 out of fear.

The landlord's agent also testified that the tenant did not pay rent for the month of February, 2011 and a notice to end the tenancy was posted to the door of the rental unit. The tenant did not respond to the notice, and did not pay the rent. A copy of that notice was not provided for this hearing.

The landlord's agent also testified that the tenant named the agent as the landlord on file no. 755729 which was heard on July 7, 2010 and provided a copy of the Decision as evidence, although no one attended that hearing on behalf of the landlord.

A tenancy agreement was prepared by the parties in handwriting, not on a pre-printed form, and the landlord's agent provided a copy for this hearing. The bottom of the form is cut off, and it is not possible to read the signatures. Also provided is a Notice of Rent Increase which names a different family member again as the landlord. The landlord's agent also provided copies of receipts which he testified are signed by the agent or by another family member, including a receipt for the security deposit in the amount of \$400.00.

The landlord's agent also testified that there were damages to the rental unit that were not repaired by the tenant prior to vacating.

Analysis

This application is for return of the security deposit. The landlord has not applied for dispute resolution claiming against the security deposit for unpaid rent or for damages, and therefore, I find that the tenant is entitled to recovery of it. The tenant is entitled to a monetary order in the amount of \$400.00.

With respect to the agreement to end the tenancy by giving the tenant \$1,600.00, the parties agree that the landlord originally offered the tenant \$2,000.00 however the tenant declined that offer. I find it difficult to accept the testimony of the landlord's agent that the landlord signed the agreement for \$1,600.00 out of fear, when the landlord clearly made a larger offer 2 months prior, which is not disputed by the parties.

With respect to the evidence of the landlord's agent that the tenant has named a different person as the landlord in a previous hearing than on this application, I note that the security deposit was collected by the landlord's wife, and the agreement to end the tenancy was signed by the named landlord. Whether or not the tenant named the proper party as the landlord in the previous application is not for me to decide. I find that the named landlord signed the agreement to end the tenancy. Further, the evidence of the tenant is that the named landlord and his wife rented the unit to the tenant, which is not disputed by the landlord's agent. Therefore, I find that the agreement is valid, and the landlord has not abided by it, and the tenant is entitled to a monetary order in the amount of \$1,600.00.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The tenant's application for additional expenses for post office costs, photograph costs and legal fees are not recoverable under the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,050.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: July 11, 2011.

Residential Tenancy Branch