



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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.

A hearing had been scheduled to proceed on March 11, 2011, however the tenant provided evidence to the Residential Tenancy Branch that the parties agreed to adjourn the hearing. A notice of a rescheduled hearing was sent to the parties by the Residential Tenancy Branch which advised the parties that the rescheduled hearing would take place by conference call on June 17, 2011 at 11:30 a.m. The tenant attended the conference call hearing, provided affirmed testimony and provided evidence in advance of the hearing, however the landlord did not attend.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The tenant testified that this fixed term tenancy began on August 1, 2007 and expired on July 31, 2008 and then continued as a month-to-month tenancy. Rent in the amount of \$2,320.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. On July 30, 2007 the landlord collected a security deposit from the tenant in the amount of \$1,000.00, as well as an additional \$2,145.00 which was to be applied to the last month of rent.

The tenant further testified that on November 16, 2010 the landlord told the tenant that the landlord would be selling the rental unit, and a realtor inspected the rental unit before any showings. The landlord told the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property would be issued, but the landlord did not serve it. The tenant accommodated all showing requests, and provided evidence in the form of an email dated November 27, 2010 which confirms the sale of the property.

On November 29, 2010 the tenant gave the landlord 10 days notice to vacate the rental unit, and the tenant moved out on December 7 or December 8, 2010. The tenant then went to Australia on December 9, 2010 for 3 weeks.

The tenant provided the landlord with a forwarding address in writing by email on January 7, 2011, wherein the tenant requested return of the security deposit and the excess rent paid. Copies of the emails exchanged between the parties were provided in advance of the hearing, which include a response from the landlord to the tenant. The response also states that a cheque had already been mailed, but the landlord was waiting for an estimate to repair the damage to the hardwood floors. The tenant also provided a statement of the landlord which was provided to the tenant. The statement confirms pre-paid rent in the amount of \$2,145.00 and \$1,000.00 for a security deposit, as well as interest on the deposit in the amount of \$21.43. The statement also deducts rent for the month of December, 2010 and damages amounting to \$806.40, which were deducted from the security deposit and pre-paid rent, leaving a balance to be remitted to the tenant in the amount of \$40.03.

Another email to the tenant from the landlord dated November 27, 2010 was provided which states that the landlord negotiated a possession date of January 11, 2011, and apologizes that it happened so quickly. It also states that the tenant had already deposited the last month's rent, so the tenant was to pay December's rent and then the landlord would prorate the days in January and refund the balance and the security deposit. Another email from the landlord the same day states that "Two months is not the requirement when you are on a month-to-month lease." Another email thanks the tenant for a mutual agreement to end the tenancy, however the tenant replied that he did not intend to mutually agree to end the tenancy.

The tenant further testified that the landlord returned \$40.03 of the security deposit to the tenant, but the cheque was returned for non-sufficient funds. The tenant has not been served with an application by the landlord for dispute resolution claiming against the security deposit or claiming damages.

The tenant claims the prepaid rent of \$2,145.00, \$1,000.00 security deposit, interest on the deposit in the amount of \$67.51, less \$748.39 for 10 days of rent during the month of December, 2010, for a total of \$2,464.12.

Analysis

Firstly, dealing with the security deposit, the *Residential Tenancy Act* states that a landlord must return a security deposit in full to the tenant or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. If the landlord fails to do so, the landlord must pay the tenant double the amount of the security deposit, plus interest. In this case, I find that the tenancy ended on December 10, 2010 and the tenant provided a forwarding address in writing on January 7, 2011 by email, which was acknowledged by the landlord by return email on January 9, 2011. The landlord has not returned the security deposit and has not applied for dispute resolution claiming against the deposit, and therefore, I find that the tenant is entitled to double recovery of the deposit, as well as interest in the amount of \$21.47.

The *Residential Tenancy Act* also states that:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, I accept the testimony of the tenant that the landlord had told him that the rental unit was for sale and eventually sold, however, the landlord did not serve the tenant with a notice to end the tenancy. Therefore, the tenant was not required to move from the rental unit, and consequently is not entitled to recover the equivalent of one month's rent payable under the tenancy agreement. The statement of the landlord to the tenant that 2 month's notice is not required on a month-to-month tenancy is not supported by the *Act*, and the landlord is required to provide the tenant with the equivalent of one month's rent if the landlord serves the 2 Month Notice to End Tenancy for Landlord's Use of Property.

I also find that the tenant pre-paid rent at the commencement of the tenancy in the amount of \$2,145.00 which was to be applied to the last month of rent payable under the tenancy agreement. I further find that the tenant was not required to give one month's notice to vacate the rental unit because the landlord acknowledged an agreement to end the tenancy. Therefore, I find that the tenant is entitled to recovery of

the \$2,145.00 less the 10 days of rent during the month of December, 2010 in the amount of \$748.38, for a total of \$1,396.62 due to the tenant.

Since the tenant has been partially successful with the application before me, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

In summary, I find that the tenant is entitled to a monetary order for \$2,000.00 for double recovery of the security deposit, \$1,396.62 for pre-paid rent, \$21.47 interest and \$50.00 for the cost of filing this application, for a total of \$3,468.09.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant in the amount of \$3,468.09. 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 6, 2011.

Residential Tenancy Branch