



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNC, MNDC, MNSD, OLC, RP, LRE, O
 Landlord OPC, OPB, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for Cause and for a Breach of the Tenancy and a claim for other considerations.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, compensation for a loss or damage under the Act, regulations or tenancy agreement, the return of the security deposit, for the Landlord to comply with the Act, make repairs to the unit and suspend or set conditions for the Landlord's right to enter the unit and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by personal delivery on September 1, 2011 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on September 1, 2011.

The Landlord confirmed that he received the Tenant's hearing package.

The Tenant's advocate confirmed receiving the Landlord's hearing package.

At the start of the Hearing the Tenant's Advocate said the Tenant had moved out of the rental unit as of September 6, 2011, therefore the Tenant was withdrawing the parts of the application to Cancel the Notice to End Tenancy, to make repairs to the unit and to set conditions for the Landlord's right of entry. As well the Landlord withdrew her application because the Tenant has moved out and she has possession of the rental unit.

Issues to be Decided

Tenant:

1. Is there loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started in January 1, 2011 as a month to month tenancy. Rent was \$450.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$225.00 on December 20, 2010. The Tenant's Advocate said the Tenant moved out on September 6, 2011.

The Tenant's Advocate continued to say the Tenant is claiming monetary compensation for double the security deposit in the amount of \$450.00, because the Landlord has not returned the security deposit and the Landlord did not do condition inspection reports on move in and move out. As well the Tenant's Advocate said the Tenant is claiming \$1,550.00 in aggravated damages for stress and frustration to the Tenant. The Tenant's Advocate said that because of the Tenant's health conditions the harassment by the Landlord's repeated visits to the Tenant's rental unit between August 12, 2011 and September 6, 2011 caused the Tenant to have increased health problems.

The Landlord said that she did not harass the Tenant, but she was unsure of when the Tenant was moving out because there were a number of dates mentioned to her so she went to the Tenant's rental unit to ask him when he was moving out. The Landlord said she was told he would move out September 1, 2011 and he actually moved out September 6, 2011.

The Landlord continued to say that the Tenant left the unit in an unclean state and she may make an application to keep the security deposit or for monetary compensation for the cleaning costs. The Landlord had no evidence of the actual cleaning costs.

Analysis

Section 24 and 36 of the Act say that a Landlord's right to retain the Tenant's security deposit is extinguished if the Landlord does not comply with the Act by not doing Condition Inspection Reports. As the Landlord did not complete either a move in condition inspection report or a move out condition inspection report as required to under the Act, I find the Landlord's right to retain the Tenant's security deposit is extinguished and I order the Landlord to return the security deposit in the amount of \$225.00 immediately.

The Tenant claims that the Landlord owes double the security deposit as indicated in section 38 (6) of the Act. This section only applies if the Landlord has not returned the security deposit nor made an application to retain the deposit within 15 days of the end of the tenancy and/or 15 days after receiving the Tenant's written forwarding address. In this case the tenancy end on September 6, 2011 therefore the Landlord has up to September 21, 2011 to return the security deposit or make an application to retain the security deposit. I find the Tenant's claim for the return of double the security deposit is dismissed with leave to reapply as the 15 days for the Landlord to return the security deposit's or make an application to retain the security deposit is not up until September 21, 2011.

As for the Tenant's claim for aggravated damages in the amount of \$1,550.00 for stress and frustration which are claimed to have worsened the Tenant's health conditions the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. The Tenant has not provide any documented evidence that supports the claim and therefore I dismiss the Tenant's claim for \$1,550.00 for aggravated damages as the Tenant has not established grounds to prove the claim.

As the Tenant has been partially successful a monetary order has been issued to the Tenant in the amount of \$225.00 representing the return of the security deposit.



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Conclusion

A Monetary Order in the amount of \$225.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlord's application is withdrawn as the Landlord has possession of the rental unit.

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*.

Residential Tenancy Branch