



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD
 Landlord MND, MNDC, MNSD, FF

Introduction

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

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking the return of the Tenant's security deposit.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on September 26, 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 July 17, in accordance with section 89 of the Act.

The Tenant and Landlord confirmed they received the other party's hearing package.

Issues to be Decided

Tenant;

1. Is the Tenant entitled to the return of the security deposit?

Landlord:

1. Are there damages or losses to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for damage or loss and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?



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Background and Evidence

This tenancy started on December 24 or December 25, 2010 a fixed term tenancy for 5 months. The Tenant said she moved out of the unit on May 26, 2011 and the tenancy ended May 31, 2011. Rent was \$2,700.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,400.00 on December 12, 2010.

The Tenant said there was no move in or move out condition inspection reports completed and signed by the Landlord and her. The Tenant continued to say that she gave the Landlord her forwarding address in writing with the application and hearing package on July 17, 2011. The Tenant said the Landlord has not returned her security deposit and she is now requesting double the security deposit as specified in the Residential Tenancy Act. As well the Tenant said she is willing to deduct \$215.00 for damage to a sink, \$265.00 for labour to install a new sink and \$79.00 for a dead plant. The Tenant said she is requesting double the remaining deposit of \$841.00 X 2 = \$1,682.00.

The Landlord said he went to the rental unit to do the move out condition inspection at the end of the tenancy, but the Tenant disagreed with the damages he said she did. As a result the Landlord said he completed the move out condition report and left it with the Tenant. The Landlord said he does not have the report and does not know where it is and he did not keep a copy of the report. As well the Landlord agreed that no move in condition inspection report was completed and signed by the Tenant and himself. The Landlord continued to say that he did receive the Tenant's forwarding address in writing on July 17, 2011 and he did not return the Tenant's security deposit or make an application to retain the security deposit until September 23, 2011. The Landlord submitted 12 photographs of the damage he is claiming to the unit. The Landlord said he believed that the Tenant had told him that he could keep the security deposit to pay for the damage to the unit.

Analysis

Sections 23 and 35 of the Act says a Landlord and a Tenant must do a move in and move out condition inspection report to establish a base line of the condition of the unit at the start of the tenancy and at the end of the tenancy. Sections 24 and 36 of the Act says that if a move in and move out condition inspection reports are not done then the Landlord's right to claim the tenant's security deposit for damages is extinguished. Both the Landlord and the Tenant agree that the condition inspection reports were not completed as specified in the Act and regulations; therefore the Landlord has not established grounds to make a claim against the Tenant's security deposit. Consequently I dismiss the Landlord's application without leave to reapply.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.



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I accept the Tenant's testimony that the tenancy ended May 31, 2011 and that she gave the Landlord a forwarding address in writing on July 17, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by August 1, 2011. Consequently I find for the Tenant and grant an order for double the security deposit of \$1,400.00 in the amount of $\$1,400.00 \times 2 = \$2,800.00$ less the amount of damages that the Tenant agreed to during the hearing. The damages the Tenant agreed to totally \$559.00. Therefore I award the Tenant $\$2,800.00 - \$559.00 = \$2,241.00$

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$2,241.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

The Landlord's application is dismissed without leave to reapply. As the Landlord was unsuccessful the Landlord is ordered to bear the costs of the filing fee for this proceeding of \$50.00 that he has already paid.

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