



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on September 27, 2011 to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Preliminary Matter

The details of the tenant's application details included a claim requesting compensation for damage or loss in the sum of \$645.00; plus return of the deposit. The tenant acknowledged her intention to receive return of the deposit as required by the Act. I have considered the claim, as set out in the details of the dispute section of the applications served to the landlord.

The tenant was provided with assistance to complete her application, via an advocacy service. The tenant clarified her claim as including return of \$520.00 paid in September, 2011, plus the deposit.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the tenant entitled to compensation for damage or loss in the sum of \$645.00?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced in October, 2010, rent was initially \$420.00 per month and increased to \$520.00 per month when the tenant's spouse moved into the unit. The tenant paid a deposit in the sum of \$100.00. Condition inspections were not completed.

The tenant provided a copy of a notice issued by the landlord on August 28, 2011, given to her on September 1, 2011, after she paid rent. The notice required the tenant to vacate the unit by the end of September, 2011, as the landlord was "going to do a complete renovation to our house." The notice was typed and indicated that the tenants had been excellent.

The tenant moved her belongings out on September 17, 2011 and returned on the 19th, but could not access the home as the locks had been changed. The police were called and access was made, but the landlord refused to provide the tenant with a copy of the key.

The landlord told the tenant they would return the deposit; but have not done so. The tenant provided her forwarding address as part of this application.

The tenant is requesting compensation in the sum equivalent to one month's rent, as the landlord issued her notice to move and she complied, so they could carry out renovations.

Analysis

Section 49(6) of the Act provides:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;*
- (b) **renovate or repair the rental unit in a manner that requires the rental unit to be vacant;***
- (c) convert the residential property to strata lots under the Strata Property Act;*
- (d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;*
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;*
- (f) convert the rental unit to a non-residential use.*

(Emphasis added)

Section 51(1) of the Act provides:

(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

I find that the notice given to the tenant on September 1, 2011, was not in the form required by the Act; however, the tenant accepted the Notice and, to the landlord's benefit, vacated the rental unit based on that notice. Therefore, I find that the landlord benefited from the notice, as if it were in the required and form and, that the rights of the tenant under the Act must also be imposed.

Therefore, I find, pursuant to section 46(6) of the Act, that the tenant is entitled to compensation as provide by section 51 of the Act, in the sum of \$520.00.

I note that the tenant had a legal right to possess the unit until September 30, 2011. The landlord changed the locks in breach of the Act, as the landlord did not have an order of possession and rent had been paid for the month of September.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. I find that no later than October 2, 2011; the landlord had been given the tenant's forwarding address, served as part of this application. There is no evidence before me that the landlord had any claim against the deposit or submitted an application for dispute resolution, claiming against the deposit, within 15 days of October 2, 2011. In fact, the notice ending tenancy given to the tenant indicated the landlord found her to be an excellent tenant. The landlord had told the tenant the deposit would be returned, but has failed to do so. Therefore, I find that the tenant is entitled to return of double the \$100.00 deposit paid to the landlord.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$770.00, which is comprised of double the \$100.00 deposit, \$520.00 compensation and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$770.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia 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: December 09, 2011.

Residential Tenancy Branch