



Dispute Resolution Services

Page: 1

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 to the landlord's service address on October 7, 2011, via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The mail was returned as unclaimed.

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

On December 12, 2011, the tenant sent the landlord the evidence package, by registered mail. That mail was accepted; however the tenant did not know the delivery date; therefore, the evidence package was not considered, as I had no evidence before me that it was served at least 5 days prior to the hearing, as required by the Rules of Procedure.

Issue(s) to be Decided

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

Is the tenant entitled to compensation for loss of a service and quiet enjoyment?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2011, it was fixed term ending August 31, 2011, at which point the tenant vacated, as required. The tenant paid a deposit in the sum of \$250.00. No move-in or move-out condition inspection reports were completed.

On August 31, 2011, with 3 co-tenants present, the tenant gave the landlord a written forwarding address, which the landlord asked the tenant to set on a table. On September 15, 2011, the tenant received a cheque in the sum of \$175.00; she had not agreed to any deductions from the deposit.

The tenant has requested compensation in the sum of \$50.00 for loss of laundry services during the past month of the tenancy. The landlord locked the door to the common laundry room area; the tenant did not discuss this with the landlord and accepted that the landlord would not provide access.

The tenant has claimed \$100.00 per month compensation for loss of quiet enjoyment during the 4 month tenancy as a result of constant interference by the landlord. The tenant did not speak to the landlord or give the landlord any written notice of the disturbances caused.

Analysis

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. In this case there is no dispute related to damages.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant. Therefore, I find that the tenant is entitled to return of double the \$250.00 deposit paid to the landlord. If the tenant is able to cash the \$175.00 cheque she currently holds, the monetary Order is to be adjusted by that amount.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Even if the landlord had engaged in appropriate behavior and denied the tenant access to the laundry, the tenant has acknowledged that she did not take any steps to mitigate the loss she is claiming, by speaking to the landlord or giving the landlord written notice that the access to the laundry was required or that the landlord's behaviour was disturbing. In the absence of evidence of attempts to minimize the claim, I find that this portion of the application is dismissed.

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 \$550.00, which is comprised of double the \$250.00 deposit 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 \$550.00. 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. If the tenant is able to successfully negotiate the \$175.00 cheque received in September, 2011, the value of the monetary order shall be adjusted to \$375.00.

The balance of the claim is dismissed.

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 19, 2011.

Residential Tenancy Branch