



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF
 MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. The application by the tenant is for return of double the security deposit and recovery of the filing fee. Both parties attended the hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

The tenant entered into a tenancy agreement with the landlord on August 2, 2011 and the tenancy was to start August 15, 2011. The tenant gave the landlord a \$2775.00 bank draft for the \$100.00 strata move-in fee, \$1337.50 security deposit and \$1337.50 rent for ½ of August 2011.

The tenant then contacted the landlord and advised him that she wanted to get a dog; the landlord's rental ad clearly states that pets are not allowed. The tenant then, on August 12, advised the landlord that as she could not have a pet she would not be taking occupancy of the rental unit. The tenant stated that on August 16, 2011 she dropped off her forwarding address with the concierge at the landlord's place of residence and also sent the forwarding address by registered mail to the landlord on August 19, 2011. The Canada Post website shows registered mail 79594352064 as successfully delivered on August 23, 2011.

The tenant in this application is seeking \$4075.00 in return of double the security deposit.

The landlord stated that the previous tenants in the rental unit had given notice to vacate July 30, 2011. The landlord stated that the tenant was very anxious to tale

possession of the rental unit by August 15, 2011 and the current tenant agreed to vacate by August 15, 2011 in order to allow the tenants to take possession of the rental unit. The landlord stated that it had been made very clear in his ad and when talking to the tenant that pets would not be allowed. The landlord stated that on August 12, 2011, only 3 days before the tenants were to take possession of the rental unit that the tenant gave the landlord notice and advised him she would not be moving in.

The landlord stated that the rental unit was advertised on Craigslist and by referral through other property managers he has as business associates. The landlord stated that he was ultimately able to secure a new tenant for October 1, 2011.

The landlord stated that he was in receipt of the tenant's forwarding address on October 16, 2011 as that was when the concierge in his building made it available to him. The landlord did not comment on the tenant's testimony that she had also sent the forwarding address to the landlord by registered mail on August 19, 2011.

The landlord in this application is seeking \$1337.50 compensation.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for loss. The tenants, per section 16 of the *Act*, entered into an agreement with the landlord to occupy the rental unit effective August 15, 2011 and then reneged on their obligation to rent the unit. The tenant gave the landlord notice to vacate on August 12, 2011 and this notice would per the legislation, have an end of tenancy date of September 15, 2011.

As a result the landlord suffered a \$1337.50 loss of rental income from September 1 through September 15, 2011.

Accordingly I find that the landlord is entitled to a monetary order for \$1337.50.

Residential Tenancy Act **Section 16 Start of rights and obligations under tenancy agreement** speaks to:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for \$2675.00 in return of double the security deposit and return of the \$100.00 strata move in fee.

The tenant sent their forwarding address by registered mail to the landlord on August 19, 2011 and the Canada Post website shows registered mail 79594352064 as successfully delivered on August 23, 2011. The landlord's application to claim against the security deposit is dated October 17, 2011 which is well after the 15 day time limit as outlined by the *Act*.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

Accordingly I find that the tenant is entitled to a monetary order for \$2775.00.

As both applications had merit, I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

Conclusion

I find that the landlord has established a monetary claim for **\$1337.50** in loss of rental income. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's \$1337.50 security deposit in full satisfaction of the claim.

I find that the tenant has established a monetary claim for **\$2775.00** in return of double the security deposit and \$100.00 move in fee and I grant the tenant a monetary order under section 67 of the *Act* for this amount.

If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 6, 2011.

Residential Tenancy Branch