



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNDC, MNR, MND, FF
For the tenant: MNSD, MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The landlord applied for a monetary order for damage to the rental unit, for unpaid rent, and money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”) or tenancy agreement, authority to retain the tenant’s security deposit and to recover the filing fee for the Application.

The tenant applied for a monetary order to recover her security deposit and for money owed or compensation for damage or loss under the Residential Tenancy Act or tenancy agreement, and to recover their filing fee.

Despite having her own Application set for hearing on this date, the landlord did not appear at the hearing in support of her application.

Therefore, I dismiss the Application of the landlord, without leave to reapply.

As to the tenant’s application, the tenant testified that she served the landlord with the Notice of Hearing and the Application by registered mail on November 25, 2011. The tenant supplied the tracking number for the registered mail, which was sent to the landlord’s address at which she carries on business as a landlord.

I therefore find the tenant successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act. Thus the hearing proceeded in the landlord’s absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this month to month tenancy began on February 15, 2010, and ended on September 15, 2011. Monthly rent began at \$800.00 and the ending monthly rent was \$825.00. The tenant paid a security deposit of \$400.00 on or about February 15, 2010.

The tenant supplied evidence and gave affirmed testimony that the landlord was provided the tenant's written forwarding address on August 31, 2011 by hand delivering a letter to the landlord. I note the letter signed by the landlord was also contained in the landlord's written evidence supplied for her own application.

The letter also requested the landlord to return the tenant's security deposit.

The tenant stated that despite this request, the landlord has not returned her security deposit.

The tenant stated there was no move-out condition inspection and that she has not signed over any portion of her security deposit to the landlord.

The tenant's monetary claim is \$936.80, which includes recovery of her security deposit of \$400.00, doubled, \$86.80 in lost wages and recovery of the filing fee in the amount of \$50.00.

Analysis

Based on the above testimony, evidence, and on a balance of probabilities, I find as follows:

In the absence of the landlord, the tenant's testimony and evidence will be preferred.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I accept the uncontradicted evidence and testimony of the tenant that the tenancy ended on September 15, 2011, the landlord was provided the tenant's written forwarding address on or about August 31, 2011, and has not returned the tenant's security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the landlord was required to return the tenant's security deposit or file for dispute resolution no later than September 30, 2011. Although the landlord did file for dispute resolution within that time, I find that the landlord had extinguished her right to claim against the security deposit pursuant to section 36 of the *Act*.

Based on the above, I find the tenant has established her monetary claim and is entitled to a return of her security deposit, doubled.

As to the tenant's claim for lost wages, tenants and landlords are entitled to recover costs for damages or losses that are directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the *Act*. I find that I do not have authority to award costs related to attending a dispute resolution proceeding and I therefore **dismiss** the tenant's claim to recover lost wages in attending this hearing.

I find the tenant's application had merit and I award her recovery of her filing fee, in the amount of \$50.00.

I find the tenant has established a **monetary claim** in the amount of **\$850.00**, comprised of her security deposit of \$400.00, doubled, and \$50.00 for the filing fee.

Conclusion

The landlord's application is dismissed, without leave to reapply.

I grant the tenant's application and have issued a monetary Order for the sum of **\$850.00**. I direct the landlord to issue the amount of \$850.00 forthwith to the tenant.

I am enclosing a monetary order for \$850.00 with the tenant's Decision. This monetary order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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 08, 2011.

Residential Tenancy Branch