



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 requested a monetary Order for return of the security deposit and damage or loss under the Act.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on January 10, 2012, to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number 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 Matters

During the hearing I made a request for copies of documents referenced during the hearing. I considered the specific documents that I had requested, which included: a copy of the registered mail receipts that will be referenced in the decision, the signed tenancy agreement and addendum and the Notice of Claim sent to the landlord via registered mail.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid in the sum of \$225.00??

Is the tenant entitled to compensation for damage or loss in the sum of \$312.00?

Background and Evidence

This tenancy commenced on September 2, 2011, rent was \$450.00 due on the first day of each month. A deposit in the sum of \$225.00 was paid. Condition inspection reports were not completed.

Copies of all requested documents were received.

The tenant rented a room in a home and shared the kitchen facilities with the daughter of the woman who he believes owned the home. The owner's daughter acted as agent for issues relevant to the tenancy.

The tenant has made the following claim:

October rent returned – damage or loss	450.00
Criminal record check fee	60.00
Bank charges in NSF check from landlord	27.00
TOTAL	762.00

At the end of September, 2011, the tenant was hospitalized. The tenant paid rent owed for October, 2011. The tenant has suffered a brain injury and has a worker who assists him; this worker had attended at the home to retrieve his computer and the tenant's key would no longer work and access could not be gained to the rental unit.

The landlord then visited the tenant in the hospital and told him he was not welcome back to the home. The tenant was provided with 2 cheques; one in the sum of \$215.00 and the 2nd in the sum of \$246.77 for return of the deposit paid, less \$10.00 for cleaning, and the equivalent of seventeen days rent for from October 15 to 31st, respectively. Both cheques were post-dated for November 14, 2011; copies of which were supplied as evidence.

The tenant waited to have the cheques processed on November 14, 2011; they were both returned as NSF and he was charged \$27.00 in NSF fees.

The addendum required the tenant to obtain a criminal record check; the term indicated if a record of violent offences was revealed, the tenancy would be terminated. The tenant paid \$60.00 to have the criminal record check completed and is claiming return of that sum as this fee and a criminal record check are not required by the Act.

On December 13, 2011, the tenant filed a Notice of Claim with the Provincial Court of British Columbia (Small Claims Court ;) a copy of this Notice was submitted at my request. The Notice included the items claimed now by the tenant via the Residential Tenancy Act process. The Notice set out the tenant's claim and included his written address. The Notice was served to the landlord, sent via registered mail on December 16, 2011; a copy of the mail receipt was submitted upon my request. The Court did not consider the claim and referred the tenant to the Residential Tenancy Branch (RTB,) for dispute resolution.

Analysis

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.

As the tenant resides in a home where he shares the kitchen facilities with the agent of the landlord, I find that the landlord's daughter meets the definition of landlord as provided by section 4(a) of the Act:

*(a) the owner of the rental unit, the **owner's agent** or another person who, on behalf of the landlord,*

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(Emphasis added)

Further, the landlord has utilized the tenancy agreement available on the RBT web site, which confirms the intention to operate within the jurisdiction of the Act.

From the evidence before me the landlord has ended the tenancy in breach of the Act. The lock to the home was changed while the tenant was hospitalized and the landlord arbitrarily ended the tenancy by informing the tenant he could not return. No Notice ending tenancy was issued, nor was a mutual agreement ending the tenancy signed by the parties. The tenant had paid rent owed for the month of October, 2011, and had a legal right to possess the rental unit.

Therefore, I find that the tenant is entitled to damages equivalent to the sum of one month's rent; \$450.00. The landlord committed an egregious breach of the Act when the lock was changed and the tenant was denied access to his home. The damages awarded are to compensate the tenant for the loss of quiet enjoyment suffered and do not take into account any other damages.

The landlord returned one-half of the rent paid for October, 2011; a post-dated that cheque, which could not be negotiated successfully.

The landlord did not complete condition inspection reports, yet determined, in the absence of the tenant and without ending the tenancy as required by the Act, that the tenant owed \$10.00 for cleaning. The post-dated cheque issued for the deposit was also NSF, resulting in bank charges to the tenant. Therefore, in the absence of the landlord, who was served notice of this a hearing; I find that the tenant is entitled to compensation for the bank charges claimed in the sum of \$7.00; the amount verified by the banking records submitted as evidence.

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.

I find, based on the Notice of Claim sent to the landlord via registered mail on December 16, 2011, that the landlord had been given the tenant's forwarding address in writing. The Notice sent by registered mail is deemed served to the landlord on the 5th day after mailing; registered mail cannot be avoided by any failure to retrieve the mail from the post office. Therefore, I find that by December 21, 2011, the landlord was given the tenant's address in writing.

I have no evidence before me that that landlord has repaid the deposit within fifteen days of receipt of the written address contained in the Notice of Claim. Therefore, as provided by section 38(6) of the Act, I find that the tenant is entitled to return of double the \$225.00 deposit paid to the landlord.

The copy of the addendum supplied as evidence indicated that the landlord had required the tenant complete a criminal record check and that this check could result in eviction, if certain charges were indicated. The Regulation sets out the fees allowed under the Act and I find that the requirement the tenant incur costs for a criminal record check as part of his tenancy agreement forms a breach of the Act by way of imposing a non-regulatory fee. However, in the absence of evidence verifying payment, I dismiss this portion of the tenant's claim.

Therefore, the tenant is entitled to the following:

	Claimed	Accepted
Damage deposit	225.00	450.00
Criminal record check fee	60.00	0
Bank charges in NSF check from landlord	27.00	7.00
TOTAL	762.00	907.00

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$907.00, which is comprised of double the deposit paid, plus damages.

Based on these determinations I grant the tenant a monetary Order for \$907.00. 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: March 20, 2012.

Residential Tenancy Branch