

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

A hearing was held on December 7, 2011 at which the Tenant was the only participant and a decision and order for double the security deposit in the amount of \$900.00 plus the \$50.00 filing fee was granted to the Tenant. As well in that decision the Tenant's application for monetary compensation for using money orders to pay the rent in the amount of \$120.00 and for loss of clothing in the amount of \$200.00 were dismissed.

The Landlord filed a review application on the basis of both Landlords were not serviced correctly, the Landlords have new and relevant evidence and the Tenant obtained the decision by fraud. The Landlords were granted a review hearing on January 4, 2012, to take place at 11:00 a.m. on January 23, 2012.

The Hearing on January 23, 2012 took place as scheduled. The Landlord attended the Hearing but the Tenant was absent. On questioning the Landlord and reviewing the registered mail tracking slip it became apparent that the Tenant may not have received the Review Hearing package because the registered mail package may have been address incorrectly. Consequently the hearing was adjourned to February 14, 2012 so that the Landlord could serve the Tenant with the Hearing package.

Both the Tenant and the Landlord were in attendance for the February 14, 2012 Hearing and the Hearing proceeded as scheduled.

Both parties submitted evidence to the Hearing and gave affirmed testimony.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Does the Tenant have a loss or damage under the Act, regulations or tenancy agreement and if so how much?

3. Is the Tenant entitled to compensation for that loss or damage and if so how much?

Background and Evidence

This tenancy started on June 1, 2010 as a month to month tenancy. The tenancy ended August 14, 2011. Rent was \$925.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 in May, 2011.

The Tenant said that she moved out of the rental unit on August 14, 2011 and gave the Landlord a forwarding address in writing on August 15, 2011. The Tenant said no move in condition inspection report or move out condition inspection report were completed. The Tenant continued to say that she cleaned the unit before leaving and she asked the Landlord for her security deposit back.

The Tenant continued to say she is also requesting \$120.00 compensation for the cost of money order she had to purchase to pay the rent because the Landlord would not issue receipts for rent payments. The Tenant said she knew the copy of the money order would act as a receipt for the rent payments she made.

In addition the Tenant also requested \$200.00 compensation for damage to cloth as a result of mold in the rental unit.

The Tenant said she has asked the Landlord for her security deposit back, but the Landlord has not returned it to date.

The Landlord said the Tenant and her had made an agreement that the Landlord could keep the Tenant's security deposit \$450.00 as payment of the rent for ½ the month of August, 2011 and that the Tenant would move out by August 15, 2011. The Landlord said she had a written note stating this, but she did not include it in her evidence package. The Tenant said she had not made this agreement because the Landlord wanted the rent paid in cash with no receipt and the Tenant would not do this. The Tenant did agree that there is unpaid rent for August, 2011 in the amount of \$925.00.

The Landlord continued to say that no move in or move out condition inspection reports were done and the Landlord did not return the Tenant's security deposit or make an application to retain the Tenant's security deposit within 15 days of the end of the tenancy and receiving the Tenant's forwarding address in writing. The Landlord said the tenancy ended August 14, 2011 and they received the Tenant's forwarding address in writing on August 15, 2011.

In addition the Landlord said she would be making an application for unpaid rent for August, 2011 and for damages with the Residential Tenancy Branch against the Tenant.

The Tenant said she cleaned the unit and requested her security deposit back from the Landlord at the end of the tenancy and she has not received the security deposit back therefore she is requesting double her deposit as indicated in the Act.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Concurrent with the decision of December 7, 2011 I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on August 15, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by August 30, 2011. Consequently I find for the Tenant and grant an order for double the security deposit of \$450.00 in the amount of $\$450.00 \times 2 = \900.00 .

With respect to the Tenant claim for \$120.00 for the cost of money orders, I find the Tenant chose to use money orders as her method of payment of the rent therefore it

does not represent a loss or damage and as a result it is not an eligible claim. I dismiss the claim of \$120.00 for the cost of money orders without leave to reapply.

In regard to the Tenant's claim for \$200.00 for the loss of clothing due to mold in the rental unit, the Tenant has not provided any evidence to show a loss actually existed and the Tenant has not proven the amount of the loss claimed; therefore I dismiss the Tenant's claim for \$200.00 for loss of clothing without leave to reapply.

As the Tenant was partially successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$950.00 has been issued to the Tenant. This Monetary order represents double the security deposit and the filing fee in the total amount of \$950.00.

As a result of rehearing the application twice due to service issues I cancel the original Monetary Order for \$950.00 issued on December 7, 2011 and I grant a new Monetary Order with this decision for \$950.00 dated February 14, 2012.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$950.00 to the Tenant. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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*.

Residential Tenancy Branch