



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on December 24, 2011. The Tenant sent in the returned registered mail envelope showing it as unclaimed by the post office. The Landlord was asked for her address and it was the same address that was on the registered mail envelope. The Landlord said she didn’t receive the Hearing Package until February 11, 2012 when the Tenant personally delivered it to her office. I find that the Landlord was served with the Tenants’ hearing package by registered mail on December 24, 201, as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

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 May 1, 2009 as a 1 year fixed term tenancy and then renewed as a month to month tenancy. The tenancy ended October 15, 2011 with a Mutual Agreement to End the Tenancy dated September 23, 2011 and it had an effective vacancy date of October 15, 2011. Rent was \$1500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$750.00 in advance of May 1, 2009.

The Tenants said that they moved out of the rental unit on October 15, 2011 and gave the Landlord a forwarding address in writing on October 16, 2011. The Tenants said no

move in condition inspection report or move out condition inspection report were completed. The Tenants continued to say that they cleaned the unit before leaving and they asked the Landlord for her security deposit back. The Tenants provided photographic evidence of the condition of the rental unit on move out.

The Tenants continued to say they are claiming \$672.00 for their time lost from work so that they were able to move out of the rental unit by October 15, 2011. As well the Tenants are claiming \$168.00 of their time lost due to the Landlord not keeping appointments with them to do a move out inspection, to return the keys and for the carpet cleaning. Further the Tenants said they are claiming an additional \$168.00 for their time lost for an appointment the Landlord made with them regarding the linoleum, but that the Landlord did not attend. The Tenants said their total claim for their time lost due to the ending of the tenancy and for broken appointments of the Landlord is \$1,008.00.

In addition the Tenants said they are claiming the moving costs of the professional movers that as they said they had to hire the movers because they did not have enough time between September 23, 2011 and October 15, 2011 to do the move themselves. The Tenants said they are claiming the cost of the movers at \$920.16 and they said a receipt was included in the evidence package.

Further the Tenants said they believe they are entitled to the equivalent of one month's rent or \$1,500.00 because the Landlord asked them to move out so that she could use the property. The Tenants said they did not receive any Notice to End Tenancy and they agreed that they ended the tenancy by mutual agreement.

The Landlord said she did not receive the Tenants' hearing package until February 11, 2011 and so she did not have enough time to prepare for this hearing. The Landlord continued to say she brought in her evidence package on March 1, 2012 to the Residential Tenancy Branch and was told it would be allowed into evidence although it was considered as late evidence.

The Landlord said she did not return the Tenants security deposit because the Tenants damaged the rental unit. The Landlord continued to say the rental unit was newly renovated prior to the Tenants moving in and therefore she did not need to do a move in inspection condition inspection report. As well the Landlord said it was too difficult to get the Tenants to come to do the move out condition inspection report so she did not do that report as well.

The Landlord said the tenancy was very frustrating as she had trouble communicating with the Tenants and therefore it was difficult to get things done. The Landlord said it was not her fault the appointments were missed it was the Tenants fault.

The Landlord said she was very concerned that her evidence package was not available for the hearing and she said it was not right that her information was not included in the hearing.

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 Tenants' security deposit within 15 days of the end of the tenancy and receiving the Tenants' forwarding address in writing. The Landlord said the tenancy ended October 15, 2011.

In addition the Landlord said she would be making an application for unpaid utilities and for damages with the Residential Tenancy Branch against the Tenants.

The Tenant said they cleaned the unit and requested their security deposit back from the Landlord at the end of the tenancy and they have not received the security deposit back therefore they are requesting double their 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.

I find from that the Tenants did give the Landlord a forwarding address in writing on October 16, 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. Consequently I find for the Tenants and grant an order for double the security deposit of \$750.00 in the amount of $\$750.00 \times 2 = \$1,500.00$.

Further since the Tenancy Ended by a Mutual Agreement to End Tenancy in writing and signed by the Tenants and the Landlord; I find that the Tenants claims for lost time and for moving expenses are not founded as they agreed to move out on October 15, 2011, the vacancy date and no provisions or clauses were made in that agreement for moving costs or for time to complete the move. Consequently I dismiss the Tenants claims for \$672.00, \$168.00 and \$168.00 all for their loss of time and for the mover costs of \$920.00 due to the ending of the tenancy.

In addition the Tenants have requested compensation of one month's rent of \$1,500.00 because the Landlord asked the Tenants to move so that she could use or sell the property. Unless a 2 Month Notice to End Tenancy for Landlord's Use of the Property is issued in writing the Landlord has no obligation to compensate the Tenants one month's rent. This tenancy ended by mutual agreement and therefore I find the Tenants are not entitled to compensation from the Landlord for ending the tenancy.

As the Tenants were partial successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$1,550.00 will be issued to the Tenants. This Monetary order represents double the security deposit in the amount of \$1,500.00 and the filing fee of \$50.00.

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 \$1,550.00 to the Tenants. The order must be served on the Respondent 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