



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for failure of the landlord to utilize the rental unit for the purpose stated in a Notice to End Tenancy for landlord use, return of her security deposit and return of utilities payments on the grounds that they were not included in rent as stated on the rental agreement.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to a Monetary Order for any or all of the claims submitted.

Background and Evidence and Analysis

This tenancy began on March 1, 2011 and ended on January 1, 2012 (move-out December 15, 2012) pursuant to a Notice to End Tenancy for landlord use served on October 27, 2011.

The tenant was give one month's free rent as provided for at section 51 of the Act when notice has been given for landlord use.

The tenant makes claim and I find as follows:

Equivalent of two month's rent for breach of stated purpose - \$3,000. Section 51(2) of the Act provides that, if a landlord does not begin steps to accomplish the purpose within a reasonable time or does not use the rental unit for a purpose stated in a Notice to End Tenancy for landlord use for at least six months, then the landlord must pay the tenant the equivalent of two months' rent.

In the present matter, the tenant gave no evidence to suggest the unit had been rented to another party. The landlord stated that neither he, nor a close family member, had been able to move in to the rental unit as it had been left in a state that required substantial renovation before it was suitable for occupancy and that he still fully intended it for use by himself or a close family member. He stated that the unit had not been rented to another party and that the renovation was beginning step necessary to accomplish the purpose stated in the notice. For that reason, and given that the application was made just over six weeks after the end of the tenancy, this part of the application is dismissed.

Reimbursement for utilities paid - (gas: \$1,869.78, hydro: \$678.95 & cable: \$1,097.25). The tenant submitted part of the standard form rental agreement in which electricity, heat and cable were included among the items checked off in clause 3(b) of the agreement as included. The landlord stated that he has misinterpreted the clause in checking off the boxes, but that it had been abundantly clear to the tenant from the beginning of the tenancy that she would be responsible for the utilities in question. He noted that the tenant put the utilities in her name and that by paying them without protest for 10 months, she had demonstrated her acceptance of responsibility for them. The landlord further noted an increased burden on utilities by the addition of four additional tenants without his consent. I accept the evidence of the landlord that indicating the inclusion of utilities was an error and that the tenant acknowledged it as such by putting the utilities in her name and paying them throughout the tenancy.

Return of the security deposit in double - \$1,500. The parties concur that the tenant paid a security deposit of \$750, of which the landlord returned \$127 on receiving the tenant's forwarding address.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise in writing as per section 38(4). Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposit.

Therefore, find that the tenant is entitled to return of her security deposit, less the \$127 already returned.

I further find that ,as the application has partially succeeded, the tenant is entitled to recover one-half of the \$100 filing fee for this proceeding from the landlord.

Thus, I find that the tenant is entitled to a Monetary Order, calculated as follows:

To return security deposit (No interest due)	\$ 750.00
One-half of filing fee	50.00
Sub total	\$1,550.00
Less portion of security deposit returned	- 127.00
TOTAL	\$1,423.00

Conclusion

The tenant's copy of this Decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$1,423.00**, for service on the landlord.

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: April 23, 2012.

Residential Tenancy Branch