

## **DECISION**

### **Dispute Codes:**

MNDC; MNSD; OLC; 0; RPP; FF

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; return of the security deposit; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; an Order that the Landlord return the Tenant's property; and to recover the cost of the filing fee from the Landlord.

The parties and their witnesses gave affirmed testimony at the Hearing.

### **Preliminary Matters**

A Hearing took place with respect to this tenancy on February 21, 2012, and was convened in response to the Tenant's application for the following:

Return of Security Deposit	\$450.00
Electric Bill for January	84.50
Credit left over after gas bill deductions paid on January 3	42.90
Reimbursement for loss of internet 25.00 per month x 26 months	650.00
Reimbursement for loss of laundry for December	30.00
Reimbursement for loss of electricity and heat 30.00 per month x 26 months	780.00
Loss of peace and enjoyment	300.00
Moving expenses	57.88
Reimbursement for loss of groceries resulting from turning the electric breaker off for my stove and fridge	200.00

The dispute resolution officer dismissed the Tenant's application for return of the security deposit **with leave to reapply**. The remaining portion of the Tenant's application was dismissed.

In the Application for Dispute Resolution that is before me, the Tenant is seeking some of the same relief that she sought on February 21, 2012. With respect to those issues, I find that they have already been decided and are therefore dismissed.

I advised the parties that I would be taking their testimony with respect to only the remaining issues identified on the Tenant's Application for Dispute Resolution. Those issues are described in the section below.

### **Issues to be Decided**

- Is the Tenant entitled to compensation: because the Landlord did not use the rental unit for the purposes set out in a Notice to End Tenancy for Landlord's Use; an amount equivalent to one month's rent for receiving a Notice to End Tenancy for Landlord's use; for the replacement cost of her property that the Landlord disposed of; for the anticipated costs of additional utility expenses incurred in her new home; for aggravated damages; and for faxing fees?
- Is the Tenant entitled to compensation equivalent to double the amount of the security deposit?
- Is the Tenant entitled to an Order that the Landlord return her personal property?

### **Background and Evidence**

The Tenant testified that on January 29, 2012, the Landlord tried to force his way into the rental unit, so she pushed him out, locked the door and called the police. The Tenant testified that the police spoke to the Landlord and told him to follow the Residential Tenancy Act and regulations and provide proper notice.

The Tenant testified that she and her son moved out of the rental unit on January 31, 2012 at midnight. She said she feared for her and her son's safety because the Landlord and other persons were banging on her doors and windows, yelling her name and moving the door handle. The Tenant testified that she called the police, but they were taking too long to get there, so she left and returned the following morning to meet with the police.

The Tenant testified that she removed all of her possessions from the rental unit, with the exception of some items that were left in storage, on February 14, 2012. The Landlord testified that she moved her things out of the garage on February 14, 2012 and out of the rental unit on February 19, 2012. The Landlord testified that she broke all of the door locks; destroyed the plumbing in the kitchen and bathroom sinks; destroyed the baseboard heaters; destroyed the toilet and the bathtub; damaged the laminate floor and walls; and left garbage all over the rental unit.

The Landlord testified that he was suspicious that the Tenant was doing something illegal in the rental unit because she would not let him in to confirm that her heater was working properly. He stated that he followed the police's advice and gave her notice

that he was going to check the heater and do an inspection on January 31, 2012, at 7 p.m.

The Landlord stated that he called the police on January 31, 2012, because he wanted the police to be present so the Tenant could not lie about what happened. He stated that the police were too busy, so at 8:30 p.m., he, his wife and his sister knocked on her door a few times, but when she did not answer they left. He stated that the police came the next day and helped him get her out of the house so he could inspect the bedroom. The Landlord testified that he found a cat in the bedroom and evidence that the Tenant was smoking, which was against the terms of the tenancy agreement.

The Landlord issued a Notice to End Tenancy for Landlord's Use (the "Notice") on February 2, 2012. A copy of the Notice was provided in evidence. The Notice indicates: "the rental unit will be occupied by the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse".

The Landlord also issued a Notice to End Tenancy for Unpaid Rent on February 2, 2012, a copy of which was also provided in evidence. The Notice to End Tenancy for Unpaid Rent indicates that the Tenant failed to pay rent in the amount of \$900.00 that was due on February 1, 2012. The Tenant testified that she did not pay rent for the month of February, 2012.

Both of the Notices to End Tenancy were posted to the Tenant's door on February 2, 2012.

The Tenant and her witnesses testified that there are four new occupants in the rental unit and that they are not related to the Landlord.

The Landlord's witness is the Landlord's daughter. She testified that the new occupants are her boyfriend's family and that they moved into the rental unit on March 10<sup>th</sup> or 15<sup>th</sup>.

The Tenant testified that she did not agree that the Landlord could keep any of the security deposit and that she provided her forwarding address in writing on February 22, 2012.

The Landlord testified that he received her forwarding address in writing on February 19, 2012. The Landlord testified that he has not returned her security deposit because the Tenant caused a lot of damage and did not clean the rental unit at the end of the tenancy. The Landlord testified that he has not filed an Application for Dispute Resolution against the security deposit.

### **Analysis**

I explained to the Landlord that this Hearing was convened to consider the Tenant's Application for Dispute Resolution and that he is at liberty to file his own Application for Dispute Resolution for damages to the rental unit if he chooses to do so.

This tenancy has ended and therefore the Tenant's application for an Order that the Landlord comply with the Act, regulation or tenancy agreement is dismissed.

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Tenant's claim for damage or loss and therefore she has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord disputed that he had any of the Tenant's personal property. I find that the Tenant did not provide sufficient evidence that the Landlord has any of her personal property or that he disposed of it. The Tenant did not provide any evidence of the worth of any property she is claiming compensation for. The Tenant did not provide sufficient evidence that she had minimized her loss (for example, by removing the property when she returned to the rental unit on February 14, 2012). Therefore I dismiss the Tenant's application for compensation with respect to this portion of her claim and decline to Order that the Landlord return her personal property.

There is no provision in the Act for recovery of the cost of faxing fees and this portion of the Tenant's application is dismissed.

I find that the Tenant provided insufficient evidence to support her claim for “anticipated costs of additional utility expenses” and this portion of her application is dismissed.

The Landlord gave the Tenant a Notice to End Tenancy for Landlords Use, pursuant to the provisions of Section 49 of the Act. Section 51(1) of the Act entitles a tenant who receives such a Notice to an amount equivalent to one month’s rent. Section 51(1.1) of the Act provides that a tenant may withhold this amount from the last month’s rent. I find that the Tenant did not provide the Landlord with due notice to end the tenancy and did not pay last month’s rent (February, 2012) and therefore she has already been compensated under Section 51(1) of the Act.

Section 51(2) of the Act requires a landlord to pay the tenant double the amount of monthly rent if steps have not been taken to accomplish the stated purpose for ending the tenancy under the Notice or if the rental unit is not used for the purpose stated on the Notice for a period of at least six months. In this case, the Landlord’s daughter’s boyfriend’s family is living in the rental unit. Section 49 defines “close family member” as: the Landlord’s father, mother, spouse or child; or the landlord’s spouse’s father, mother or child. I find that the Landlord’s child’s boyfriend’s family does not meet the definition of “close family member” and that therefore the Tenant is entitled to compensation pursuant to the provisions of Section 51(2) of the Act in the amount of **\$1,800.00**.

Copies of Sections 49 and 51 of the Act accompany this Decision.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord testified that he received the Tenant’s forwarding address in writing on February 19, 2012. The Landlord did not return the security deposit within 15 days of receipt of the Tenant’s forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides 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 security deposit.

Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, in the amount of **\$900.00**.

A copy of Section 38 of the Act is attached to this Decision.

The Tenant has been partially successful in her application and I find that she is entitled to recover the portion of the filing fee that she would have paid for a claim under \$5,000.00, which is **\$50.00**.

The Tenant has established a monetary award in the amount of \$2,750.00, calculated as follows:

Compensation pursuant to the provisions of Section 51(2) of the Act	\$1,800.00
Partial recovery of the filing fee	<u>\$50.00</u>
TOTAL MONETARY AWARD	\$2,750.00

### **Conclusion**

I find that the Tenant is entitled to compensation equal to double the amount of the security deposit, pursuant to the provisions of Section 38(6) of the Act.

I find that the Tenant is entitled to compensation equal to double the monthly rent, pursuant to the provisions of Section 51(2) of the Act.

I find that the Tenant is entitled to recover \$50.00 from the \$100.00 filing fee.

The remainder of the Tenant's application is dismissed **without leave to reapply**.

I hereby grant the Tenant a Monetary Order in the amount of **\$2,750.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 18, 2012.

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Residential Tenancy Branch