



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC and FF

Introduction

This hearing was convened on the tenants' application of May 1, 2012 for return of her security deposit, damage or loss under the legislation or rental agreement and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on May 4, 2012, the respondent landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issue(s) to be Decided

This matter requires a decision on whether the tenancy ended lawfully, and whether the tenant is entitled to return of her security deposit, damage or loss and recovery of her filing fee.

Background and Evidence

This tenancy began on March 27, 2012 and ended on April 6, 2012 when, after some disturbing incidents, the tenant departed out of concern for her personal security and safety and that of her children who were to stay with her periodically.

The tenant paid a security deposit of \$300 on March 13, 2012 and paid \$140 in rent for the period of occupancy.

During the hearing, the tenant gave evidence that her first cause of concern arose when the landlord had not given her a key either to enter the rental building or her specific suite, which on at least one occasion resulted in her not being able to access her rental unit when the landlord did not answer her door.

On April 1, 2012, the tenant was even more shocked to return home and find that a bottle of wine in her unit had been about half consumed and that drawers containing her personal items, including lingerie, had been disturbed and left open. In consequence, the tenant felt compelled to dispose of all the open containers of her recently stocked kitchen. When told the following day, the landlord reacted strangely stating that she felt violated and subsequently vacillated between telling the tenant that she would have to leave, then imploring her to stay.

The tenant subsequently obtained the landlord's reluctant consent to install a lock on the door to her suite at her own expense.

On or about April 6, 2012, the landlord admonished the tenant because a resident of a trailer pad on the property had not been able to enter the tenant's suite after attempting to do so for some time with a number of keys. At that, and at the urging of a friend who attended the hearing as a witness, the tenant vacated the rental unit. In addition, the tenant gave evidence that she had not felt safe staying in the rental unit for a number of nights following the first incident.

In following communication with the landlord, the tenant was assured her security deposit would be returned, but that position was clearly reversed in a later telephone conversation in which the landlord, after receiving the Notice of Hearing, threatened in somewhat vulgar terms to bring an action against the tenant.

Analysis

As to the question of whether the tenancy ended lawfully, section 25 of the Act provides that :

- (1) At the request of a tenant at the start of a new tenancy, the landlord must
 - (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a).

Section 28 of the *Act* protects tenants' rights to quiet enjoyment of a rental unit including: reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 which requires 24-hour written notice and other conditions.

Section 44 of the *Act* outlines the mechanisms by which a tenancy may ended and includes an order by the director under subsection (1)(f).

I find that the landlord breached the *Act* by failing to provide keys and a new lock at the tenant's request and by, at least in the second instance, and possibly in the first instance, by condoning entry to the rental unit by a third party and without proper notice under section 29 of the *Act*.

For that reason, I find that it was prudent of the tenant to leave the tenancy on April 6, 2012 and I declare the tenancy ended on April 6, 2012 under section 44(1)(f) of the *Act*.

As to return of the security deposit, 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.

In the present matter, I find that I cannot award double the security deposit as the tenant stated that she had served the landlord with a forwarding address only as contained in the copy of her application form served with the Notice of Hearing. I find it would be reasonable under that circumstance for the landlord to await the outcome of the hearing before returning the deposit.

Therefore, I find that the tenant is entitled to a Monetary Order for \$300 for return of the security deposit, but not in double.

The tenant claims a further loss in the order of \$150 including loss of use of the rental unit, loss of the open foodstuffs she had to dispose of after finding the wine and foodstuffs had been accessed and part of the wine consumed by persons unknown.

Similarly, I find the tenant should not have been left with the cost of changing the lock and is entitled to some consideration for those days when she did not feel safe to remain in the rental unit.

As I do not have sufficient evidence to accurately itemize these claims, I find that, on the balance of probabilities, they would exceed \$50 dollars and I grant that amount in nominal damages.

As the application has succeeded on its merits, I find that the tenant is entitled to recover the \$50 filing fee for this proceeding from the landlord.

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

For return of the security deposit (No interest due)	\$300.00
Filing fee	<u>50.00</u>
TOTAL	\$400.00

Conclusion

The tenant's copy of this Decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$400.00 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: June 28, 2012.

Residential Tenancy Branch