



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNC, MNDC, MNSD, MNR, MNSD, MNDC, SS, FF, OTHER

Introduction

This hearing was convened in response to an application filed by both the tenant and the landlord.

The tenant's application seeks:

1. More time to make an application seeking to cancel a Notice to End Tenancy given for cause;
2. To cancel a Notice to End Tenancy given for cause
3. To dispute an additional rent increase;
4. A monetary Order;
5. Recovery of the security deposit; and
6. Recovery of the filing fee.

The landlord's application seeks:

1. A monetary Order for unpaid rent;
2. To be allowed to retain the security deposit; and
3. Recovery of the filing fee.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

This tenancy began on September 15, 2011 rent was fixed at \$550.00 per month due and payable on the 15th of each month. On September 7, 2011 the tenant paid a security deposit of \$225.00. The tenancy ended on April 13, 2012. The tenant testified that the landlord returned only \$175.00 of her security deposit although she did not give him permission to make any deductions. The tenant says she supplied the landlord with

her forwarding address when she swerved him with her Application for Dispute Resolution.

The tenant says she is seeking the balance of her security deposit of \$100.00. In addition during her tenancy the tenant says she paid an extra \$100.00 in February to the landlord in order to have a guest stay with her and she would like that sum back too. Further the tenant is seeking \$100.00 for gas used while moving, \$50.00 to recover the filing fee and \$300.00 for "...last minute moving stress and inconvenience throughout renting period...".

The landlord says he is seeking \$1,425.00 for unpaid rent or utilities. The landlord says that this is for utilities, having an extra person living in the rental unit for refusing to pay the extra hydro as agreed. He is also seeking \$275.00 for rent for the balance of April. The landlord says the tenant vacated the rental unit on April 12, 2012 without giving proper notice.

The tenant says she never agreed to pay these extra charges.

Analysis

Neither party produced a Notice to End Tenancy for cause. The landlord says no such notice was served and that the tenant vacated the rental unit without giving 30 days written notice as required under the Act. A review of the documentary evidence submitted reveals no written notice. In order to vacate the rental unit on 30 days notice the tenant would have had to give her notice on the 14th of the previous month to vacate by the 15th of the next month. However the only evidence with respect to the end of this tenancy is in the tenant's file and it is a note that states:

We received \$175.00 security deposit on April 13th/12 at 2110 Address of 11443, 87th have paid \$275.00 security deposit on Sept. 7th 2011. Reason for leaving BC Hydro bill issues.

shows that no such written notice was provided in evidence; I therefore find that the landlord did not receive a proper written notice to end this tenancy and he is therefore entitled to one month's rent in the sum of \$550.00 for the notice period. However as the landlord has only claimed \$275.00 for two weeks rent, that is the sum that will be allowed.

As there is no evidence that the landlord served the tenant with a Notice to End Tenancy for cause and indeed the landlord states he did not serve any such notice and

because this tenancy has now ended, the tenant's applications for more time to make an application to cancel a Notice Tenancy for Cause and to cancel that notice are dismissed as unnecessary as the tenancy has ended.

The tenant's application seeking to dispute an additional rent increase is related to her claim for recovery of \$100.00 that was deducted from her security deposit to pay for an additional party living in the rental unit. I will deal with the issue of the \$100.00 as a security deposit issue and I dismiss her application to dispute an additional rent increase as there has been insufficient evidence to show that an actual rent increase was levied.

With respect to issues related to parking, hydro and extra guests, the parties agree that all agreements between them were made verbally. The parties do not agree as to the terms of those verbal agreements. Given that there is nothing in writing to document the agreements between the parties and given that the parties disagree on the terms of their verbal agreements I will dismiss the claims for hydro, parking issues and charges for extra guests.

With respect to the tenants claim for \$300.00 for "...last minute moving expenses and inconvenience throughout renting period..." I find the tenant has failed to bring sufficient evidence to prove that the landlord should be held responsible for "...last minute moving expenses..." or loss of quiet enjoyment during the tenancy.

With respect to the security deposit, the evidence shows that the landlord deducted \$100.00 from the tenant's \$275.00 security deposit without her written permission or without an Order of the Residential Tenancy Branch. I therefore find that the landlord is in breach of Section 38 of the *Residential Tenancy Act* which requires landlords to either return the deposit or make application seeking to retain the deposit within 15 days of receipt of the tenant's forwarding address. While the landlord did make an application seeking to retain the deposit, he actually retained part of the deposit prior to making that application. I therefore find that he did not comply with the provisions of Section 38 of the Act. In such cases a landlord must return double the deposit. As the deposit on account of the tenant at the time of this application was \$100.00 I will double that sum. I will offset this sum from the \$275.00 I have found that the tenant owes to the landlord as set out above leaving a balance owing by the tenant to the landlord of \$75.00.

As both parties have been successful in their applications I will not direct one party to pay the filing fee of the other party.

Total monetary award payable by the tenant to the landlord is \$75.00.

The landlord is provided with an Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. This is a final and binding Order as any Order of the Provincial Court of British Columbia.

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 18, 2012.

Residential Tenancy Branch