



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The tenant seeks recovery of her security deposit, a monetary order for compensation for damage or loss and recovery of the filing fee paid for this application.

The tenant's initial request was for \$3,450.00 which she later increased to \$15,262.80. At the hearing of this matter the tenant reduced her claim back to \$3,450.00.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issues(s) to be Decided

Is the tenant entitled to recovery of the security deposit, a monetary award and the filing fee paid for this application?

Background and Evidence

This tenancy began September 15, 2001 and ended on March 15, 2012. Rent at the end of the tenancy was \$1,700.00. The tenant testified that she paid a security deposit characterized as "first and last months' rent" of \$1,500.00 on September 15, 2001. The tenant testified that she rented this home as a secondary home that she used for business purposes approximately 8 months of the year.

With respect to the security deposit, the tenant testified that since the tenancy ended the deposit has not been returned to her. The tenant says the landlord always had her home address in Vancouver therefore it was unnecessary for her to provide the landlord with that address once again. The tenant therefore claims double the deposit, that is \$3,000.00 as the landlord has not returned the deposit as required by the Act.

In addition the tenant claims \$400.00 for water bills. The tenant testified that the rent included water however the well dried up after they occupied the rental unit. The tenant says it was necessary for them to have water brought in and that water was placed into a cistern. The tenant says that the cistern had a hole in it and the water "poured out".

The tenant says the landlord assured her that the hole had been repaired but it had not been repaired. The tenant is seeking the cost of the water, \$400.00, from the landlord.

The landlord says he had no idea that the legislation did not allow him to ask for “first and last months’ rent” as a deposit. With respect to the return of the deposit the landlord agreed that it has not been returned. The landlord says there are damages.

With respect to the water issue the landlord testified that the cistern was “dripping” and the drip was repaired. The landlord says that there rain water was being captured on the property and that the tenants could have used this but because of the male tenant’s allergies the tenants preferred to have spring water brought in by the Salt Spring Water company. The landlord submits that as water was supplied and the tenants chose to buy additional water elsewhere that is their choice that they should pay for.

Analysis

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenant of the forwarding address to the landlord in writing requesting the return of the deposit. This is so even if the landlord clearly knew the tenant’s address. The tenant argued that she did provide her forwarding address on the Application for Dispute Resolution. However I do not find that this is the form of notice contemplated by the Act in that it would be sufficient to put the landlord on notice to return the deposit as set out in Section 38(1). I therefore find that the tenant’s application for recovery of the deposit is premature. However, the landlord is now on notice as of June 27, 2012 that he has 15 days within which to return the deposit and any applicable interest or to make application seeking to retain the deposit.

With respect to the deposit itself the Act allows the landlord to collect a deposit:

- 17** A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

And:

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

As the landlord collected a deposit in excess as the amount allowed under the Act and the tenancy has now ended, the landlord must repay the overpayment in the sum of \$750.00 and interest of \$33.45 for a total of \$783.45 forthwith. The tenant shall receive an Order in this regard.

Once the landlord returns the overpayment the "security deposit" will be \$750.00 plus applicable interest.

With respect to her claim for the costs for water the testimony of the parties is. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

As the tenant has been somewhat successful in her application I will allow her to recovery \$25.00 of the \$50.00 filing fee she paid.

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