



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act; return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony stated that on May 15, 2012, copies of the Application for Dispute Resolution and Notice of Hearing were personally delivered to the landlord at his place of residence. Service occurred with the tenant's son present as a witness, at approximately 7:30 p.m.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum equivalent to 1 months' rent and for moving costs?

Is the tenant entitled to return of the security deposit?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced in August 2011; rent was \$2,300.00 per month, due on the first day of each month. A deposit in the sum of \$600.00 was paid on August 19, 2011. A move-in condition inspection report was completed and given to the tenant; a move-out condition inspection report was not completed.

The tenant supplied a copy of a mutual agreement to end tenancy, signed by the parties on January 6, 2012. This document indicated that the tenant would be given rent abatement; the amount was dependent upon the departure date from the unit. The landlord agreed to return the deposit and pay for costs associated with moving. The

parties reached this agreement as the landlord had sold the rental unit. A 2 Month Notice to End Tenancy for Landlord's use was not given to the tenant.

The tenant is claiming:

- \$2,300.00 equivalent to 1 month's rent;
- \$500.00 moving costs; and
- \$600.00 return of the security deposit paid.

The tenant vacated the unit at the end of February, 2012, and did not pay February rent owed, as compensation set out in the mutual agreement to end the tenancy.

On April 1, 2012, the tenant sent the landlord a note that contained her forwarding address, requesting the balance of money owed to her as set out in the mutual agreement they had signed on January 6, 2012. The tenant sent the note to the landlord's address; the same address where he lived when she personally served him with notice of this hearing. The tenant has not received any funds or return of her deposit paid.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the mutual agreement to end tenancy included terms which set out payments that are not within the jurisdiction of the Residential Tenancy Act. The tenant and landlord reached a mutual agreement to end the tenancy and made other financial agreements, which have no basis under the Act. If the tenant believes she is due payment as the result of a contract signed with the landlord she is at liberty to seek a solution via another venue.

The tenant paid a security deposit and I find that the landlord was served with the tenant's forwarding address on April 6, 2012; the 5th day after the note was mailed by the tenant. The landlord did not respond to the tenant's request for return of her deposit and did not submit a claim against the deposit within 15 days of April 6, 2012.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit

paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Therefore, I find that the tenant is entitled to return of double the \$600.00 deposit paid to the landlord.

As the tenant's application has merit I find that she is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,250.00, which is comprised of double the \$600.00 deposit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of **\$1,250.00**. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I decline jurisdiction on the balance of the tenant's claim.

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: July 12, 2012.

Residential Tenancy Branch