



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlord with the Notice of Hearing documents by registered mail, sent April 26, 2012.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to compensation for his labour with respect to frozen water pipes and for being "custodian" at the rental property during the tenancy?

Background and Evidence

This tenancy began on April 1, 2009. The rental unit is the upper suite in the Landlord's house. Monthly rent at the beginning of the tenancy was \$1,100.00, and was reduced to \$900.00 a few months into the tenancy. Rent did not include utilities and the Tenant was responsible for paying 2/3^{rds} of the bills. The Tenant paid a security deposit in the amount of \$550.00 on April 1, 2009.

The Tenant testified that on March 2, 2012, he gave notice that he was ending the tenancy on March 31, 2012. The Landlord testified that the Tenant was evicted.

No Condition Inspection Report was prepared at the beginning or the end of the tenancy.

The Tenant stated that he moved out of the rental unit on April 1, 2012. The Landlord testified that he was out of town and therefore did not know when the Tenant moved,

but that the Tenant's vehicles were still at the rental property on April 25, 2012. The Tenant stated that he moved his car "two or three days after" he moved out of the rental unit and that his 5 ton truck was at the rental property until April 26, 2012. The Tenant stated that he left the keys to the rental unit in an envelope on the Landlord's door on April 1, 2012.

The Tenant testified that he provided the Landlord written notification of his forwarding address on March 30, 2012 with a witness present. The Tenant provided a copy of the letter in evidence. The Tenant stated that he gave the rental unit's address as a forwarding address because he had arranged for the post office to forward his mail to his new address. The Tenant stated that the Landlord did not return any of the security deposit and therefore he seeks double the amount of the security deposit, pursuant to the provisions of the Act.

The Landlord testified that he did not return any of the security deposit to the Tenant for the following reasons:

- The Tenant did not clean the carpets at the end of the tenancy and his dog had urinated and defecated on them, ruining them.
- The Tenant used the heatilator fireplace too often, blackening the ceiling.
- The Tenant modified the steps to the top floor of the rental property without the Landlord's permission.
- Four days before the Tenant moved out, after the Landlord evicted him, the Tenant ordered 960 gallons of water, which was unnecessary because there was plenty of water in the cistern. The Tenant could have filled the tank from the cistern. Three quarters of the water leaked out because the valve was leaking due to frozen pipes in January, 2012.
- The tenant broke the handle to the Landlord's "splitting maul" and the latch was missing from the suite's door handle.
- The Tenant did not clean underneath the fridge.
- The Tenant owes the Landlord for storing his truck and car at the rental property after the tenancy ended.
- The Tenant still owes \$47.50 for his share of the electricity bill.
- The Landlord had to clean the sundeck.

The Landlord estimates that the total cost for labour and materials to repair and clean the rental unit, the unpaid utility bill, and to store the Tenant's vehicles is \$1,254.78. The Landlord stated he did not file an Application for Dispute Resolution with respect to these damages because he did not know where the Tenant lived.

The Tenant testified that the water pipes froze twice a year for three years because the Landlord did not insulate them properly. He stated that he was without water for 7 days after the pipes froze in January, 2012. The Tenant stated that he was expected to retrieve the Landlord's mail while he was away and to be custodian of the rental property. The Tenant seeks compensation in the amount of \$450.00 for being without water for 7 days and an additional \$450.00 for being "custodian" of the rental property.

The Tenant stated that the carpets were dirty when he moved into the rental unit. He stated that the ceiling was black because there was a chimney fire in the rental unit. He testified that he had the heatilator fireplace cleaned after the chimney fire.

The Landlord testified that he "graciously received the Tenant's mail" in his mailbox. He testified that the Tenant was without water for only 4 days, not 7 as claimed. He stated that he should have replaced the heat tape on the water pipes every year, but that he was too busy. He stated that he tried to relocate the water tank, but he ran out of time. The Landlord stated that he warned the Tenant to have 10 gallons of water on hand in the event that the water pipes froze.

The Landlord testified that he had the chimney swept two years ago, but that he had never had the heatilator fireplace cleaned.

Analysis

This is the Tenant's application. The Landlord did not file an Application for Dispute Resolution for damages and therefore the only application I have to consider is the Tenant's.

A landlord cannot arbitrarily decide whether or not to return any or all of the security deposit at the end of a tenancy. A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

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.

Based on the testimony of both parties, I find that the Tenant provided the Landlord with his forwarding address on March 30, 2012. A forwarding address does not have to be the Tenant's new residence. Canada Post distinguishes between occupants at the same address/mail box. If the Landlord had mailed the security deposit or an

application for dispute resolution to the rental unit , it would have been deemed received by the Tenant 5 days after mailing pursuant to the provisions of Section 90 of the Act. In any event, the Tenant provided another address for service on his Application for Dispute Resolution which was filed on April 26 and served on the Landlord.

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.

Further to the provisions of Section 38(6) of the Act, I find that the Tenant is entitled to a monetary order for double the security deposit, in the amount of **\$1,100.00**. No interest has accrued on the deposit.

A landlord has a responsibility under Section 32 of the Act to provide and maintain residential property in a state of decoration and repair complies with the health, safety and housing standards required by law, and makes it suitable for occupation by a tenant.

Residential Tenancy Policy Guideline 1 clarifies a landlord's and a tenant's responsibilities regarding maintenance of the rental property. For example, landlords are responsible for cleaning and maintaining fireplace chimneys at appropriate intervals and for inspecting and servicing furnaces and heating ducts in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications. Under Policy Guideline 1, the Landlord is also responsible for maintaining and winterizing tanks.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that the Landlord did not comply with Section 32 of the Act and that the Tenant was without water for a period of days as a result of the Landlord's failure to comply with Section 32 of the Act.

This is the Tenant's application and therefore the onus is on the Tenant to prove his claim on the civil standard, the balance of probabilities. The parties disagreed with respect to the number of days that the Tenant was without water at the rental unit. The Tenant did not provide sufficient evidence that he was without water for 7 days and therefore I have based the Tenant's compensation on being without water for 4 days. I allow this portion of his claim in the amount of **\$120.00** (\$30.00 per day). The remainder of the Tenant's application is dismissed. The Dispute Resolution process determines issues arising from tenancies only and has no jurisdiction over employment contracts.

The Tenant's application had merit and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$1,270.00** 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: July 06, 2012.

Residential Tenancy Branch