



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was conducted by face to face hearing in response to an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit. The tenant's application claims the sum of \$670.76 and the details portion of the application claims double the amount of the security deposit. During the course of the hearing, the tenant applied to amend the application to change the monetary amount claimed to \$650.00. The landlords did not oppose the application, and the amount claimed was ordered amended.

The tenant and both landlords attended the hearing and the tenant was assisted by an advocate. The parties gave affirmed testimony and provided evidentiary material in advance of the hearing to each other and to the *Residential Tenancy Act*. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues respecting service or delivery of documents for this hearing were raised during the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of all or part of the security deposit or double the amount of such security deposit?

Background and Evidence

The parties agree that this month-to-month tenant began on November 1, 2011 and ended on February 1, 2012. Rent in the amount of \$650.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On January 13, 2012 the tenant paid a security deposit in the amount of \$325.00. No written tenancy agreement was prepared. The rental unit is owned by one of the named landlords, hereinafter referred to as BB who also resides in the rental building. The other named

landlord, hereinafter referred to as RC is a tenant of the landlord, BB, and is also the brother of the tenant in this application. The siblings resided in the rental unit together.

The tenant testified that her rent and security deposit were paid to the landlord, BB, not to her brother, and provided a copy of a receipt signed by BB. However, the tenant had given her brother \$300.00 in October, 2011 to store the tenant's belongings until she moved in.

The day after the tenant paid the security deposit, the tenant's brother told her that she had to move out by the end of January, 2012 and then changed his mind saying that he found her to be making an effort, and it was cold out so the tenant could stay. The tenant's brother had told her to move on previous occasions and changed his mind, but this time the tenant stated that she decided not to stay.

The tenant called a storage company and movers arrived and a bin was delivered to the rental unit on January 31, 2012. The tenant testified that her safest bet was to get the majority of her belongings out of the rental unit.

The tenant provided a forwarding address in writing on February 27, 2012 which was hand delivered to BB. A copy of the note was provided for this hearing and it contains an address of a storage unit, not a residential address.

The first landlord, BB, testified that neither of the named landlords are mean or vicious. He drove with his partners to Kamloops to help the tenant move into the rental unit at no cost to the tenant.

During the tenancy, the tenant borrowed his phone on a number of occasions, which was permitted even when it was not convenient. He heard conversations of the siblings from his unit and heard RC try to calm the tenant down and the tenant flying off the handle. The tenant was unreasonable. She was never denied access to the garage where she kept her wheelchair. Both BB and RC spent most of their time trying to help her.

The tenant did not pay any rent for the month of February, 2012 and neither landlord attempted to pursue it because if it was found that the tenant owed the rent, the landlords would never see it. Also, she had her keys to the rental unit until the end of February, 2012 and didn't actually move out all of her belongings until towards the end of February, and in the meantime, she came and went as she pleased.

In February, 2012 the landlord, BB gave RC \$325.00 and told him to give it to the tenant as return of her security deposit. RC returned and told BB that she refused the money

and took off. RC told BB twice after that that he tried to give her the security deposit but the tenant refused to take it.

The landlord, BB received an address of the tenant in writing, but it was not a residential address. It was a storage locker address and he didn't believe if he mailed the money to the tenant that she would actually get it.

The other named landlord, RC testified that his sister was moved into his rental unit by his landlord to help her out. The tenant had a storage locker as well and it took 2 days to complete the move from Kamloops to Kelowna. He stated he didn't know what he was in for. The tenant was given 3 verbal notices during the tenancy that if her arguments continued she'd have to leave. He then told her she could stay because she's his sister, and he loves her and wants to help her, but she decided to move. He went to the garage to help her with her wheel chair and she blew up.

RC further testified that the tenant has suffered a major trauma and a stroke, and he understands that she has some brain damage, such as memory loss; she thinks something and believes it. RC finally told her to leave.

RC further testified that he tried to give the tenant back the security deposit but the tenant took off backwards in her car. RC then gave the money back to the landlord, BB, but saw the tenant again and offered \$150.00 of his own money knowing he would get the rest from BB and would be compensated for paying the \$150.00, but the tenant refused it again stating that it wasn't enough. The third time that RC attempted to pay her, the tenant was in a vehicle driven by a friend and told the friend to drive away. After that occasion, RC went to the police.

RC also testified that he paid her storage fees at \$100.00 per month for her but did not specify when.

The tenant attended the hearing seated in a wheelchair and during the course of the hearing the tenant was continuously interruptive despite several warnings by me and counselling by the advocate. Both of the named landlords became visibly frustrated by the interruptions of the tenant and by the content of the testimony, and RC was also warned to cease verbal interruptions.

Analysis

It is clear in the testimony that the nature of the relationship between the parties was made difficult at least in part by the circumstances of the previous trauma and stroke of

the tenant. However, the tenancy has ended and the reasons that it ended are really not relevant to the application before me. Whether or not the tenant owes the landlord(s) money cannot be considered; neither of the named landlords has made an application for dispute resolution.

The tenant testified that her rent and security deposit were paid directly to the landlord, BB, not to her brother, RC and provided a copy of a receipt to substantiate that testimony. I therefore find that the tenant has no claim against RC, and I dismiss the tenant's application as against RC without leave to reapply.

The only issue to be determined is whether or not the tenant is entitled to double recovery of the security deposit. There is no doubt that the tenant is entitled to return of the security deposit because the landlord has not made an application for dispute resolution for a monetary order and authorizing him to keep it. The *Residential Tenancy Act* requires a landlord to apply for dispute resolution to keep it or return it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either within that 15 day period, the landlord must repay the tenant double the amount of such security deposit.

In this case, the tenant testified that her forwarding address in writing was delivered in person to the landlord, BB on February 27, 2012. Both BB and RC testified that the tenant was offered repayment of the security deposit 3 times, beginning in February, 2012, although the exact date is not known. In each case, the tenant refused the money. The onus is not on the landlord to prove the dates that the tenant was offered the money, but the onus is on the tenant to prove that the landlord failed to return the security deposit within 15 days. The tenant did not dispute the testimony of RC or BB that she was offered the money in February, and I find that the tenant has failed to prove that the landlord failed to comply with Section 38 of the *Residential Tenancy Act*.

The *Residential Tenancy Act* also states that any person who makes a claim against another person must do whatever is reasonable to minimize the damage or loss. Refusing money and then claiming double does not satisfy doing whatever is reasonable, and I therefore find that the tenant has failed to establish entitlement to double the amount of the security deposit.

I find that the tenant has established a claim for \$325.00 for recovery of the security deposit held in trust by the landlord, BB.

Conclusion

For the reasons set out above, the tenant's application for a monetary order as against the landlord, RC is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord, BB pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$325.00. I order the landlord to send a cheque or money order payable to the tenant to the address provided by the tenant on the Tenant's Application for Dispute Resolution.

This order is final and binding on the parties and may be enforced.

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: September 21, 2012.

Residential Tenancy Branch