



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 a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, neither of the landlords appeared. Evidence submitted by the tenant includes the Canada Post tracking number for both packages, and the Canada Post website informs that both packages were "successfully delivered."

The tenant's request during the hearing to amend the original application to include a monetary order for the double return of the security deposit and pet damage deposit was granted.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on May 1, 2010. At that stage monthly rent of \$900.00 was due and payable in advance on the first day of each month. Subsequently, on or about January 1, 2012, monthly rent was reduced to \$900.00. Near the start of tenancy a security deposit of \$500.00 was collected. As well, \$300.00 was collected which the tenant testified was for the combined purpose of a pet damage deposit and utilities.

When the tenant returned to her unit after an outing on June 10, 2012, she found a couple of inches of water on the floor throughout her unit. The tenant contacted the landlords who in turn contacted a restoration company. The tenant's furnishings were moved and / or relocated at that time, many of them to the outside carport. The tenant

was unable to continue residing in the unit, and she requested reimbursement from the landlords of rent for the remainder of June in order that she could store her belongings and live elsewhere pending completion of the restoration.

Having heard nothing further from the landlords, by letter dated July 28, 2012, the tenant informed the landlords that she had “found somewhere else to live” and had “removed [her] belongings from the premises immediately.” In this letter the tenant also informed the landlords of her forwarding address and requested the return of her deposits. To date, the landlords have failed to respond to the tenant and her deposits have not been returned.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 44 of the Act speaks to **How a tenancy ends**, in part as follows:

44(1) A tenancy ends only if one or more of the following applies:

(e) the tenancy agreement is frustrated;

Further, Residential Tenancy Policy Guideline # 34 addresses “Frustration,” in part as follows:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the tenancy agreement was frustrated on June 10, 2012 at which time the unit became flooded. Accordingly, I find that the tenant has established entitlement to reimbursement of rent for the 21 day period from June 10 to 30, 2012 in the amount of **\$630.00***, which is calculated as follows:

$\$900.00$ (monthly rent) \div 30 (# days in June) = $\$30.00$ (daily rent)

$\$30.00$ (daily rent) \times 21 (days) = $\$630.00$

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and / or the pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and / or the pet damage deposit and must pay the tenant double the amount of the security deposit and / or the pet damage deposit.

Once again, on the basis of the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlords have neither filed an application for dispute resolution, nor returned the tenant's security and / or pet damage deposits within 15 days after the tenant provided her forwarding address in writing on July 28, 2012. In the result, I find that the tenant has established entitlement to the double return of her security deposit in the total amount of **\$1,000.00*** (2 x \$500.00) and the double return of her pet damage deposit in the total amount of **\$600.00*** (2 x \$300.00).

As the tenant has succeeded with her application, I find that she has also established entitlement to recovery of the **\$50.00*** filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$2,280.00** ($\$630.00 + \$1,000.00 + \$600.00 + \50.00). Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court 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: September 12, 2012.

Residential Tenancy Branch