



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 dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the return of double her security deposit and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted documents into evidence which included, among other things, copies of: the tenancy agreement; a move out condition report she completed in the absence of the Landlords; the Tenant's written statement, hydro bills, the notice to end tenancy issued to the Landlords, the letter providing the Landlords with her forwarding address, and photos of the hydro meter, breaker boxes, and breaker listing.

The following facts were not in dispute:

- The rental unit is one of four units located in a house that has three separate hydro meters.
- The parties entered into a fixed term tenancy that began on March 1, 2012 and was set to end on September 1, 2012.
- Rent was payable on the first of each month in the amount of \$850.00 and on February 2, 2012 the Tenant paid \$425.00 as the security deposit. There was an error on the tenancy agreement which lists an incorrect security deposit amount of \$450.00 which should read \$425.00.
- No move in or move out condition inspections were conducted and no reports were completed by the Landlords.
- On June 24, 2012 the Tenant provided the Landlords written notice that she would be ending her tenancy effective August 1, 2012.
- The Tenant vacated the property by July 31, 2012 leaving the keys inside the rental unit.
- On July 23, 2012 the Tenant provided the Landlords with her forwarding address via registered mail.
- The unit was re-rented as of August 15, 2012.

The Tenant stated that she had concerns with her hydro costs being too high so she discussed the issue with the Landlords who told her that it was due to increases from the hydro company. She advised that after further investigation she found out that the breaker box in her unit was supplying electricity to another unit (unit # 4) as well as the hot water tank used to heat the water for the shared laundry room. She was concerned that the Landlords never disclosed this to her considering she was required to pay 100% of the hydro usage for the breaker box in her unit; which is why she ended her tenancy early and is seeking recovery of 50% of her hydro costs in the amount of \$132.73.

The Landlords confirmed they have not returned the Tenants security deposit, they do not have her written permission to keep it, they do not have an Order authorizing them to keep it, and they have not made an application for dispute resolution to keep the deposit.

Both Landlords acknowledged that they knew that the Tenant's hydro meter supplied power to unit #4 and the commonly used laundry room hot water and that neither one of them disclosed this to the Tenant prior to entering into the fixed term tenancy agreement which required the Tenant to pay for hydro. The Landlords argued they created a diagram of the electrical panels and provided the existing tenants copies of the diagram as far back as January 2012, which was prior to this Tenant's tenancy, and

then again after the Tenant occupied the rental unit. They are aware that the Tenant did not receive the copy they left for her.

Analysis

The Tenant vacated the property by July 31, 2012 and the Landlords were provided the Tenant's forwarding address, in writing, on July 23, 2012, by registered mail.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than August 15, 2012. They did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the forgoing I find that the Tenant has succeeded in proving her claim for the return of double her security deposit plus interest in the amount of **\$850.00** (2 x \$425.00 + \$0.00 interest).

The evidence supports that at the time the parties negotiated the terms of the tenancy the Landlords knew that the Tenant's hydro costs would include hydro used by other tenants. Neither Landlord disclosed the hydro situation to the Tenant, even after she approached them to discuss her bills.

Based on the aforementioned I find the Landlords made a conscious and deliberate choice not to disclose the hydro situation to the Tenant prior to entering into a fixed term tenancy agreement with her. Accordingly I award the Tenant damages in the amount of **\$132.73** which is equal to one half of her hydro costs during her tenancy.

The Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,032.73** (\$850.00 + \$132.73 + \$50.00). This Order is legally binding and must be served upon the Landlords.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

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: November 08, 2012.

Residential Tenancy Branch