



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution seeking a monetary order for compensation under the Act or tenancy agreement, and for the return of the security deposit. Furthermore, the Tenant requested a return of rent paid to the Landlord for one month.

Only the Tenant and his Advocate appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Advocate for the Tenant testified that she served an Agent for the Landlord at the rental unit on August 24, 2012, in person, with the Notice of Hearing and the Application. Despite this the Landlord did not appear at the hearing. I find the Landlord has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

This tenancy ended as a result of a hearing on July 4, 2012, before a different Dispute Resolution Officer. An order of possession and a monetary order for unpaid rent were granted at that hearing, and it was ordered that the security deposit would be used to offset part of the rent owed for June 2012. The Tenant in the present Application before me was not named as a party in the first proceeding; rather, one of his roommates was identified as the tenant/respondent in the July 4, 2012 hearing. The tenant/respondent did not attend the July 4th hearing and was unsuccessful on an Application for Review Consideration.

I explained to the Tenant and his Advocate that the security deposit issue was *res judicata*, or, a matter for which a final decision had been made, and I have no

jurisdiction to alter a final decision. Therefore, the Tenant's claim for return of the security deposit is dismissed without leave to reapply.

Furthermore, at the outset of the hearing an unidentified person announced he was going to be recording the hearing. I asked this person to identify himself and he explained he was the tenant/respondent, from the first hearing described above (the "tenant/respondent"), and he was there to assist the Tenant. I noted that the Tenant had already appointed an Advocate to assist him.

I explained to the tenant/respondent that private recording of proceedings were not allowed under section 9.1 of the rules of procedure, and that any recording had to be done in accordance with section 9.2 of the rules of procedure, that is, with advance notice to the branch and with an official court reporter in attendance. Despite this explanation, the tenant/respondent would not verify he had ceased recording and his responses to me became inappropriate and argumentative. I then excused the tenant/respondent from the hearing and explained I would not proceed until he had left the room where the Tenant was located.

Later in the hearing and despite my excluding the tenant/respondent, I could hear the tenant/respondent coaching the Tenant with answers. When I cautioned the Tenant he explained the tenant/respondent was just going through the room to get a drink. The Tenant then altered this and stated that the television was on and I must be hearing those voices. I explained to the Tenant that these contradictory responses tended to bring his credibility into question. The Advocate for the Tenant apologized on behalf of the Tenant. The Tenant was cautioned about telling the truth in a hearing.

Issue(s) to be Decided

Is the Tenant entitled to monetary relief from the Landlord?

Background and Evidence

As explained above, this tenancy ended by way of an order of possession granted to the Landlord on July 4, 2012. The Tenant testified that he was out of the rental unit before the end of July 2012. The Advocate for the Tenant stated the Landlord was aware that the Tenant vacated the rental unit on or about July 30, 2012, due to conversations and emails she exchanged with the Landlord.

The Advocate explained that despite the Tenant vacating the rental unit before the end of July, the Landlord received the Tenant's August rent money and refused to return it to

the Tenant. The August rent money had been paid directly to the Landlord through the ministry providing financial support to the Tenant.

In evidence the Tenant and Advocate provided a document from the ministry providing assistance to the Tenant. The documents states, "Please be advised landlord from August, [name of the Landlord] cashed rent cheque of \$412.50 July 31, 2012." [Reproduced as written.]

This document is signed by a member of the ministry staff.

The Advocate for the Tenant explained that the Landlord denied her requests to return the rent money to the Tenant.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached the Act by accepting rent money for August of 2012, a period in which the Tenant had no right to possess the rental unit, and was in fact not residing in the rental unit.

Based on the uncontradicted evidence, I find the Landlord was not entitled to rent for August of 2012 from the Tenant.

To allow the Landlord to keep the rent money for August, when he is not entitled to it, would result in an unjust enrichment to the Landlord, contrary to the common law. Pursuant to section 91 of the Act, the common law applies to residential tenancies in British Columbia.

Based on the documentary evidence before me, I find that the Landlord's breach of the Act has caused the Tenant to suffer a loss of **\$412.50**.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Tenant has established a claim for **\$412.50** in losses against the Landlord. I grant and issue the Tenant a monetary order for this amount. This order must be

served on the Landlord as soon as possible and may be enforced in the Provincial Court of British Columbia.

Conclusion

The Tenant has established that the Landlord took rent for August of 2012, when the Landlord was not entitled to it. The Landlord has breached the Act and is ordered to pay the Tenant \$412.50.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 06, 2012.

Residential Tenancy Branch