



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This was the hearing of applications by the tenant and by the landlord. The applications were heard together by conference call. The named tenant and the landlord's representatives called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit, including double the amount of the deposit?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Squamish. The tenancy began on April 1, 2012 for a one year fixed term and thereafter month to month, with rent in the amount of \$835.00 due on the first day of each month. The tenants paid a security deposit of \$375.00 on March 28, 2011.

According to the testimony of the landlord's representative the tenant came into the landlord's office on March 5, 2012 and gave notice that she intended to move out on March 31st. The landlord submitted a copy of a handwritten document whereby the tenant gave notice that she would vacate the rental unit as of April 1st, 2012. The document was noted as: "Received March 5, 2012". The tenant moved out on April 3, 2012. She said that she could have moved out sooner, but she stayed to perform extra cleaning at the invitation of the landlord's representative. The tenant paid only a portion of the rent for March. She paid a total of \$437.50, leaving \$397.50 outstanding for March.

The landlord and tenant participated in a condition inspection on April 3rd. The tenant gave the landlord's representative a forwarding address which she wrote on the condition inspection report.

According to the landlord's representative she told the tenant that she would not be receiving her security deposit because there was unpaid rent due. She testified that the tenant told her that she still had a key to the rental unit and that she threatened to damage the unit if she did not get her deposit back. The landlord's representative testified that the locks were changed at a cost of \$161.59 because of the tenant's threat. She said that the landlord had to remove furniture abandoned by the tenant. The removal cost for a couch and bed was \$58.11. The landlord's representative testified that the landlord was unable to re-rent the unit for April due to the lack of proper notice and due to the tenant's failure to vacate until April 3, 2012. The landlord claimed loss of revenue for April in the amount of \$835.00.

The tenant testified that she visited the landlord's office on February 5th, not March 5th, because she was unsure when her fixed term tenancy expired. She said that she told the landlord's representative that she wanted to move because her son was no longer living with her and paying his portion of the rent.

The tenant said that she could have moved before April 3rd. But she performed extra cleaning at the request of the landlord. She said that the landlord's representative told her at the time of the condition inspection that she need not worry about the unpaid rent for March because the landlord: "had already written it off". With respect to furniture removal she said that the landlord told her not to worry about it because the landlord had other things at the rental property to dispose of. The tenant also claimed that the landlord did not advertise or make efforts to re-rent the unit for the month of April. The tenant said that she left her dryer at the rental unit to the benefit of the landlord.

The landlord's representative denied all of the tenant's allegations. She said that she certainly did not tell the tenant that rent for March had been written off. She testified that the tenant attended at the landlord's office on March 5th as stated on the Notice signed by the tenant and she denied that the landlord had other items to dispose of or that she told the tenant not to worry about removing her furniture.

Analysis and conclusion

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this

provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with her forwarding address in writing, because the landlord acknowledged that she wrote it on the condition inspection report form and based upon the acknowledgement of the landlord at the hearing I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$750.00 as claimed.

With respect to the landlord's claim for compensation I find that the landlord's version of events is credible and accords with common sense and expected behavior. I do not accept the tenant's testimony that on April 3rd the landlord's representative said that the landlord had "written off" the balance of March rent. Neither do I accept that the landlord said that the tenant need not worry about removing her abandoned furniture. I accept the testimony of the landlord's representative, buttressed as it is by a written document in preference to the tenant's testimony that she gave verbal notice to the landlord on February 5th. I accept the landlord's evidence that Ms. T.S. wrote the notice dated March 5th and it was signed by the tenant on that date. I find that the tenant did not give one month's written notice to end the tenancy as required by the *Residential Tenancy Act*.

I find that the landlord is entitled to a monetary award in the amount claimed, namely: the sum of \$1,452.20 made up of the following:

- Unpaid rent for March: \$397.50
- Loss of revenue for April: \$835.00
- Furniture removal: \$58.11
- Cost to change locks: \$161.59

The landlord is entitled to recover the \$50.00 filing fee for its application, for a total award of \$1,502.20. Pursuant to section 72 of the *Residential Tenancy Act* I set off the \$750.00 award to the tenant against the award granted to the landlord. This leaves a net amount due to the landlord of \$752.20 and I grant the landlord a monetary order under section 67 in the said amount. This order may be registered 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: November 30, 2012.

Residential Tenancy Branch