



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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 and respond to each other's testimony. 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

Should the Tenant be issued a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: receipts for a fridge and stove; an Employment and Assistance cheque that was cashed August 8, 2012; letters written to and from the Landlord; a 10 Day Notice; and the Tenant's written submission.

The Landlord submitted documentary evidence which included, among other things, copies of: his written statement; and receipts for repairs.

The parties agreed they entered into a verbal tenancy agreement that began on November 1, 2005 and ended at the end of June 2012 when the Tenant vacated the property after the Landlord was awarded an Order of Possession. The Tenant's rent was \$444.00 each month and was paid directly to the Landlord from Income Assistance.

No move in condition inspection report form was completed at move in and no inspection report form was completed at move out.

The Tenant advised she was seeking \$1,649.00 which is comprised of the following:

\$444.00 for her August 2012 rent that was paid directly to the Landlord from the Ministry of Social Development in error. She had her July rent paid directly to her and she gave it to her new landlord and the Ministry was supposed to switch her payments to the new landlord. The Landlord cashed the cheque and refuses to return the money to her.

\$400.00 for the return of her security deposit which she paid to the Landlord in cash on or before November 1, 2005. She confirmed that she did not provide the Landlord with her forwarding address until she served him with her application for dispute resolution. She said she spoke to him and his wife on several occasions and requested the return of her deposit in writing, prior to making her application for dispute resolution.

\$805.00 for compensation because they were not able to use all of the bedrooms in the house. She stated that she was paying for a three bedroom house but one of the rooms had to be closed up due to water damage and mold that resulted after a roof leak.

The Landlord and his Agent confirmed that the Landlord received and cashed the July 25, 2012 Income Assistance cheque. They refused to return the security deposit and the July 25, 2012 rent money to the Tenant because she owed them money for past rent and damages to the unit. They argued that they were never allowed in the rental unit so they were not aware of the damages to the unit.

Analysis

This tenancy ended June 21, 2012 after the Landlord was granted an Order of Possession. After careful consideration of the above testimony and evidence, I find as follows:

- The Landlord breached the Act by failing to conduct an inspection, complete the condition inspection report form and provide the Tenant with a copy of that form at the beginning and at end of the tenancy.
- At the time the Tenant filed her application for dispute resolution she had not provided the Landlord with her forwarding address in writing. That being said, the

Tenant confirmed that her forwarding address was provided on her application for dispute resolution which the Landlord received at the end of September 2012.

Based on all of the above findings, I conclude that both parties extinguished their right to the deposit. In such cases, I refer to the Residential Tenancy Policy Guideline 17 which provides that:

8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to complete the inspection and give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

In conclusion, the Landlord breached their entitlement to the deposit first. Thus, the Landlord was required to return the deposit to the Tenant or file an Application for Dispute Resolution within 15 days of the tenancy ending or receiving the tenants' forwarding address in writing in order to comply with section 38(1) of the Act.

In this case, the Landlord was required to return the deposit no later than October 15, 2012. The evidence supports the Landlord refused to return the deposit. Therefore, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 deposit and the landlord must pay the tenant double the security deposit.

Based on the above I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest in the amount of **\$814.17** (2 x \$400.00 + \$14.17 interest).

The Landlord admits to cashing a cheque that was paid on behalf of the Tenant for August 2012 rent, knowing full well that this tenancy ended June 21, 2012. Notwithstanding the Landlord's argument that the Tenant owes him money, he had no legal entitlement to cash the July 25, 2012 cheque as this tenancy had previously ended. Accordingly, I award the Tenant recovery of the August rent payment in the amount of **\$444.00**.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the

burden of proof has not met the burden to prove their claim and the claim fails. In this case, the Tenant has the burden to prove the value of her tenancy was reduced by \$805.00 due to the presence of mold in one of the bedrooms. The Landlord denied that the Tenant was unable to use any portion of the house. The only evidence before me was disputed verbal testimony which I find insufficient to meet the Tenant's burden of proof; therefore I dismiss her claim for \$805.00, without leave to reapply.

The Landlord submitted evidence outlining losses he allegedly incurred, which were not relevant to the matters that were before me today. The Landlord was advised that he is at liberty to file his own application and resubmit evidence if he wishes to pursue a claim.

Conclusion

The Tenant is hereby awarded a Monetary Order in the amount of **\$1,258.17** (\$814.17 + \$444.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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: December 20, 2012.

Residential Tenancy Branch