



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit, monetary compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act and the filing fee for this proceeding.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on September 26, 2012. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords absence.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is there a loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to compensation for loss or damage and if so how much?
4. Has the Landlord complied with the Act?

Background and Evidence

This tenancy started on August 1, 2011 as a fixed term tenancy with an expiry date of July 22, 2013. Rent was \$2,900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$2,200.00 in July, 2011.

The Tenant said that they moved out of the rental unit on September 1, 2012 as a result of the Landlord issuing an invalid 2 Month Notice to End Tenancy and because the Landlord was harassing them. The Tenant continued to say he gave the Landlord his forwarding address in writing on September 1, 2012. The Tenant said there was no move in or move out condition inspections done and the Landlord has not returned the Tenant's security deposit of \$2,200.00 as of yet. The Tenant said he has told the Landlord about the rules for returning security deposits and a previous Dispute Resolution Officer explained the rules about security deposits to the Landlord, but the Landlord has not complied with the Act to date. The Tenant continued to say that they cleaned the unit before leaving and he asked the Landlord for his security deposit back.

In addition the Tenant said that the Landlord did not repair the air conditioning in the home and since this was a premium home with a rent of \$2,900.00 per month, the Tenant is claiming \$966.66 for services and facilities not provided (no air conditioning) that were included in the tenancy agreement. The Tenant said he requested the air conditioning be repaired a number of times by phone in July, 2012 and on August 11 and August 21, 2012 by email. The Tenant said the Landlord did not repair the air conditioning and as a result the Tenant said the house was unbearably hot for the last 6 weeks of the tenancy. The Tenant said he is requesting $\frac{1}{3}$ of one month's rent ($\$2,900.00 \times \frac{1}{3} = \966.66) as compensation for the Landlord not providing air conditioning in the rental unit from July 15, 2012 to August 31, 2012.

The Tenant continued to say that the Landlord breached the tenancy agreement, because the Landlord moved into the guest house on the property on a full time basis on July 10, 2012. The Tenant said this is a breached clause # 25 in the tenancy agreement, which state the Landlord can use the guesthouse from time to time on a short term basis and this use of the guest house will not interfere with the Tenant's quiet enjoyment of the rental unit. The Tenant said the Landlord moving into the guest house resulted in the Tenant's quiet enjoyment of the property being disrupted and there were additional electrical expenses which the Tenant paid. The additional electrical expenses resulted because the guesthouse's electricity goes through the rental unit and those additional electrical expenses are shown on the rental unit's electrical bill. The Tenant said he paid addition electrical expenses of \$174.90 for July, 2012 and \$144.16 for August, 2012.

In addition the Tenant said he is requesting one month's rent of \$2,900.00 be paid to him from the Landlord as a result of the loss of quiet enjoyment of the rental unit resulting from the Landlord moving into the guesthouse full time. The Tenant said the Landlord harassed his family by making noise and confronting the Tenants in their yard and by posting negative remarks about the Tenants on the internet. The Tenant said the Landlord has now removed those remarks from the internet as she was directed to do so by the previous Arbitrator.

The Tenant said his total claim is for double his security deposit in the amount of \$4,400.00, compensation for no air conditioning of \$966.66, additional electrical bills of \$319.06 and \$2,900.00 for loss of quiet enjoyment of the rental unit for a total of \$8,585.72.

The Tenant said he is also requesting to recover the filing fee of \$100.00 from the Landlord.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find from that the Tenant did give the Landlord a forwarding address in writing on September 1, 2012. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$2,200.00 in the amount of $\$2,200.00 \times 2 = \$4,400.00$.

Section 32 says a Landlord must maintain a property and Section 27 says a Landlord must not restrict services or facility if it is a material term of the tenancy agreement. Clause 17 of the tenancy agreement states the Landlord is responsible for the repairs of the air conditioning. The Tenant did advise the Landlord verbally, by email and in a previous dispute resolution hearing that the air conditioning was not working and the Landlord did not repair the problem and the Landlord did not act with reasonable diligence as stated in clause 17 of the tenancy agreement. Consequently I find for the Tenant and award the Tenant \$750.00 for not having the use of the air conditioner in the hottest months of the year. The award is based of \$250.00 for July 15, 2012 to July 31, 2012 and \$500.00 for the month of August, 2012.

In addition I accept that the Tenant has incurred a loss of \$319.06 for additional electrical expenses for electrical costs that the guest house used during the period of July 10, 2012 to August 31, 2012. As the Tenant has paid these costs and has submitted receipts as proof, I award the Tenant the additional electrical costs of \$319.06.

The terms governing the guest house are clearly stated in clause #25 of the tenancy agreement. It says the Landlord and the Landlord's guests may reside in the guest house from time to time on a short term basis, such occupation not to interfere with the Tenant's quiet enjoyment of the property. The Tenant testified that the Landlord moved into the guest house on a full time basis on July 10, 2012 and the Tenant supported this claim by providing photographs of letters to the Landlord addressed to the rental unit's address. Consequently I find the Landlord did move into the guest on a full time basis and this is a breach of the tenancy agreement. I accept the Tenant's testimony that the Landlord disturbed the Tenant's quiet enjoyment of the rental unit enough that they moved out of the rental unit. The tenancy agreement is the basis of any tenancy and it sets out how the tenancy is to work. When one side breaches that agreement there must be consequences. I find for the Tenant, that the Landlord breached the tenancy agreement and this resulted in the Tenant's loss of quiet enjoyment of the rental unit to the point where the Tenant was disturbed to the extent that they had to move out of the unit. This is a serious result of the Landlord's breach of the tenancy agreement. Therefore, I award the Tenant his request of one month's rent of \$2,900.00 for the Landlord's breach of the tenancy agreement and for the Tenant's loss of quiet enjoyment of the rental unit.

As the Tenant was successful in this matter I further order the Tenant to recover the cost of the filing fee of \$100.00 for this proceeding from the Landlord. Pursuant to section 38 and 67 a monetary order for \$\$8,469.06 will be issued to the Tenant.

Double security deposit	\$4,400.00	
Loss of air conditioning	\$ 750.00	
Additional electrical costs	\$ 319.06	
Loss of quiet enjoyment	\$ 2,900.00	
Filing fee	\$ 100.00	
Balance owing		\$8,469.06

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$8,469.06 to the Tenant. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia

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*.

Residential Tenancy Branch