



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mailing on November 15, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double of part of 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 the loss or damage and if so how much?
4. What other considerations are there?

Background and Evidence

This tenancy started on August 1, 2010 as a month to month tenancy. Rent was \$1,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$550.00 on June 25, 2010. In addition the Tenant paid a \$600.00 deposit to hold the suite, which was used as a partial rent payment of \$600.00 for the November, 2012 rent.

The Tenant said she moved into the rental unit on August 1, 2010 and in October 2010 a representative from the City came to her door and told her that the suite she was living in was illegal and she should prepare to move out. On October 31, 2012 the Tenant moved out of the rental unit into another rental unit that the Landlord had in the same rental complex that was a legal suite. The Tenant lived in that unit from November 1, 2010 to September 27, 2012 when she moved out of the rental unit. The Tenant continued to say that no move in or move out condition inspection were completed on either of the rental units that she had lived in.

The Tenant said on October 12, 2012 she wrote the Landlord a letter requesting the remained of her security deposit to be returned. The Letter says that the Tenant had received \$250.00 on October 8, 2012 and \$50.00 on October 10, 2012, but there was still \$250.00 owing to the Tenant. The Landlord said he did not complete any inspection reports and has not made an application to retain any part of the Tenant's security deposit. As well the Landlord said he retained \$250.00 of the Tenant's security deposit for damages that the Tenant did to the rental unit. The Landlord said there was damage to the some of the doors and moldings and there was damage to the doors on the counters. The Landlord said he spent much more on the repairs than \$250.00, but he believed the Tenant and he agreed he could retain this amount from the security deposit to cover the damages. The Tenant said she left the unit in a good state of repair and in very clean condition. As well the Tenant said she did not make any agreement with the Landlord to retain any part of the security deposit. The Tenant said that is why wrote the Landlord the letter of October 12, 2012.

In addition the Tenant said she endured a great deal of stress as a result of the Landlord renting her an illegal suite and having to move from one unit to another rental unit. The Tenant said she had to move on short notice and she had to do all the moving herself. As a result the Tenant has requested compensation for stress of 3 month's rent in the amount of \$3,300.00.

The Landlord said he did not know the suite was an illegal rental unit and the Tenant's stress was not caused by the Landlord as they provided a different legal rental unit in the same complex for the Tenant to move into. The Landlord said they have tried to work with the Tenant and said it is wrong that the Tenant is claiming that they are responsible for her difficulties.

The Tenant said the Landlord is wrong to rent a suite out with no paper work and then expect rent to be paid by cash. The Tenant said the Landlord is not being honest in his explanation of what happened.

The Landlord's advocate closed the Landlord's remarks by saying that he does not speak English well and he did not understand the process, so the Landlord did not send any evidence into the hearing to defend his position. The Landlord's advocate said they do not believe the Tenant's claims are valid.

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 that the Tenant did give the Landlord a forwarding address in writing on October 12, 2012. The Landlord did not repay the full 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 unpaid portion of the security deposit of \$250.00 in the amount of $\$250.00 \times 2 = \500.00 .

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the Tenant's monetary claim for the return of 3 month's rent in the amount of \$3,300.00 for stress and loss or quiet enjoyment of the rental unit. The Tenant did the use of a rental unit during the entire tenancy so no services or facilities

were withheld or lost. The Landlord did error by not providing the Tenant with the proper documentation for a rental agreement and the Landlord may have misrepresented the rental unit as being legal when it was not. These errors on the part of the Landlord caused the Tenant to move without proper notice. I find the Landlord is solely responsible for the Tenant's inconvenience of having to move to a new rental unit because the rental unit that she was in was illegal. Consequently I find the Tenant has established grounds for compensation. I find the Tenant was informed of the illegal suite in the first part of October, 2012 and she moved out October 31, 2012; therefore I award the Tenant one month's rent in the amount of \$1,100.00.

The Tenant's claim for moving expenses and other costs associated with the application are not quantified or verified by receipt or other proof of a loss; therefore I dismiss the these claim without leave to reapply.

As the Tenant was partially successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 38 and 67 a monetary order for \$1,650.00 will be issued to the Tenant. This Monetary order represents double the unpaid portion of the security deposit, loss of quiet enjoyment of the unit and the filing fee.

Double the unpaid portion of the security deposit	\$ 500.00
Loss of quiet enjoyment of the unit	\$1,100.00
Filing fee	\$ 50.00
Balance owing to the Tenant	\$1,650.00

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 \$1,650.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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*.

Residential Tenancy Branch