



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on November 9, 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 the security deposit?
2. Is there a loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to monetary compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on August 16, 2011 as a fixed term tenancy with an expiry date of August 15, 2012. Rent was \$1,600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$800.00 on August 15, 2011. The tenancy ended on July 31, 2012 as a result of a Mutual Agreement to End a Tenancy dated and signed by both the Landlord and Tenant on July 17, 2012.

The Tenant said the Landlord returned \$379.00 of the Tenant's security deposit shortly after the tenancy ended. The Landlord said he dropped the security deposit cheque off between August 10 and August 15, 2012 at the Tenant's new residence.

The Tenant continued to say that he had paid the full amount of the utilities over the last 5 months of the tenancy and according to the tenancy agreement he should have only paid 60% of the utilities. The Tenant said the other 40% of the utilities were to be paid by the other tenant in the rental complex. The Tenant said he told the Landlord about the other tenant not paying and the Tenant said the Landlord said it was not his problem it was between the two tenants. The Landlord said the other tenant had told him they

had paid part of the utilities and were waiting for other bills to be sent to them. The Tenant said he had the utility bills, but he did not submit them with the evidence package. The Tenant said he is claiming \$594.80 in utility bills he paid for the other tenant.

As well the tenant said he was under the understating that the Landlord was going to return 1 month's rent to him in the amount of \$1,600.00 as compensation for ending the tenancy. The Landlord said he did not make any agreement to return rent to the Tenant. The Tenant said there was nothing in writing about this it was just his understanding because the other tenants were getting compensation for moving out.

The Tenant also requested to recover the filing fee of \$50.00 for the application.

The Landlord said he did not do a move in or move out condition inspection report and he did retain \$421.00 of the Tenant's security deposit for carpet cleaning and damage to the rental unit. The Landlord said they agreed that the Tenant would clean the carpets at the end of the tenancy and the Tenant damaged the kitchen faucet and 2 lights needed to be replaced. The Landlord said he submitted receipts and he is claiming \$445.00 in damages.

Analysis

Section 24 and 36 say if a Landlord does not do a move in and move out condition inspection then his claim against the Tenant's security deposit is extinguished. Consequently the Landlord does not have right under the Act to retain any part of the Tenant's security deposit: As well:

Section 38 (1) of the Act 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 or about July 31, 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 part of the security deposit of \$421.00 in the amount of $\$421.00 \times 2 = \842.00 .

As the Tenant was partially successful in this matter I further order the Tenant to recover the cost of the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 38 and 67 a monetary order for \$892.00 will be issued to the Tenant. This Monetary order represents double the unpaid security plus the filing fee.

Double the security deposit	\$842.00
Filing Fee	\$ 50.00
Balance owing to the Tenant	\$892.00

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$892.00 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*.

Dated: February 04, 2013

Residential Tenancy Branch

