



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, a monetary order for a return of her security deposit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, evidence was discussed. The landlord said that she could not open the electronic evidence submitted by the tenant and that she did not receive the complete copy of the tenant's application. The landlord said that she would prefer going forward with the hearing as she did not want an adjournment of the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and to recover the filing fee?

Background and Evidence

The tenant gave evidence that this tenancy began on April 1, 2011, ended on October 31, 2012, monthly rent was \$875.00 and the tenant paid a security deposit of \$435.00 at the beginning of the tenancy.

The security deposit has not been returned to the tenant.

The tenant's monetary claim is \$1650.00, comprised of \$870.00 for the security deposit of \$435.00 doubled, rent reimbursement for ½ of a month for \$437.50, moving truck for \$80.10, loss of a parking spot, damage to a dresser, and loss of a broom for \$212.40 and the filing fee of \$50.00.

The parties were previously in dispute resolution on October 11, 2012, on the cross applications of the parties.

The tenant was granted monetary compensation in the amount of \$835.00, with some of the items included in the award to be addressed later in this Decision.

In support of her application, the tenant said that the landlord was provided her written forwarding address on October 30, 2012, in a hand delivered letter. The landlord agreed.

The tenant stated that the landlord has not returned her security deposit, and is seeking monetary compensation for its return. The landlord agreed that the security deposit has not been returned, due to the excessive damage caused by the tenant.

The parties agreed that there were no condition inspection reports, either for the move-in or the move-out.

As to the tenant's request for \$437.50, for reimbursement of ½ month's rent, she submitted that she was given compensation for loss of use of the rental unit by a previous Arbitrator in the Decision of October 11, 2012. However, the tenant contended she was entitled to compensation for loss of use for the balance of the month, until the tenancy ended, as the floor was completely ripped up in October and the rental unit was unliveable due to the construction for repair of a leak.

The tenant said that she paid rent of \$660.00 for October, explaining that a deduction of \$200.00 had been made, for a rent reduction and for loss of parking.

As to the claim for loss of parking, the tenant submitted that she was deprived of her parking space by the landlord.

As to the claim for damage to the dresser, the tenant said that the repair work by the building contractors left drywall dust on her dresser, causing the top to be scratched and damaged.

The tenant also claimed that she lost a broom due to sweeping up drywall dust.

In response, the landlord agreed that there was construction ongoing during October 2012, due to a water leak; however, the landlord said the prior dispute resolution hearing addressed the issues of compensation to the tenant due to loss of use of the rental unit.

The landlord did not dispute that there was drywall dust in the rental unit due to the ongoing construction, but did dispute that the dust could cause the damage as claimed by the tenant.

The landlord also contended that the tenant did not decide to leave, she was evicted.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Return of the security deposit-

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence shows that the tenancy had ended by October 30, the landlord received the tenant's written forwarding address on October 30, 2012, the landlord has not applied for arbitration claiming against the security deposit, and has not returned any portion of the tenant's security deposit.

I therefore find the tenant has proven a monetary claim of \$870.00, which is her security deposit of \$435.00, doubled.

Reimbursement of rent for October and November 2012-

I find the tenant submitted inconsistent and inconclusive evidence, claiming that she was entitled to half a month's rent for \$437.50, while saying that she paid only \$660.00 for that month, which would be the amount of \$330.00. Additionally it was not made clear if the compensation awarded to the tenant in the previous Decision of October 11, 2012, was meant to compensate the tenant for loss of use for the balance of the month.

I also considered the tenant's evidence of a receipt for a payment of \$475.00, showing that the payment was for another tenancy starting on October 15, 2012. I therefore could not determine if the tenant resided in the rental unit through the end of October 2012, suffering a loss of use.

Due to the above, I find the tenant failed to submit sufficient evidence to support her claim for reimbursement of one half of a month's rent and I dismiss her claim for \$437.50.

Moving costs-

The tenant claimed for moving expenses in her prior application for dispute resolution and that issue has been previously determined in the Decision of October 11, 2012, when the claim for moving expenses was dismissed. I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*.

I therefore dismiss the tenant's claim for \$80.10.

Loss of a parking spot, damage to a dresser, and loss of a broom-

The tenant assigned one value to these three items, without providing a specific breakdown of each item claimed. As I could not determine how the tenant arrived at this figure, I find the tenant submitted insufficient evidence to prove her claim. I also find that the tenant failed to submit proof of a loss or damage to these items, through receipts, or that she was deprived of their use.

I therefore dismiss the tenant's claim for \$212.40.

As the tenant was successful with her claim for a return of her security deposit, I allow her recovery of the filing fee of \$50.00.

Due to the above I find the tenant has proven a monetary claim of \$920.00, comprised of her security deposit, doubled, in the amount of \$870.00, and the filing fee of \$50.00.

Conclusion

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$920.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of such enforcement may be recoverable from the landlord.

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 28, 2013

Residential Tenancy Branch