



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 double the security deposit, for compensation for loss or damage under the Act, regulations or the tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on December 6, 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 with both the Landlords and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is the Tenant entitled to compensation for damage or loss and if so how much?

Background and Evidence

This tenancy was to start on August 1, 2012 as a fixed term tenancy for 6 months with an expiry date of January 30, 2013. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 in July, 2012.

The Tenant said they changed their mind about the tenancy and in September, 2012 she made an agreement with the Landlord to end the tenancy early. This agreement says the Tenant would pay the Landlord \$1,000.00 in compensation. A copy of the agreement was submitted into evidence. The Tenant said she moved out of the rental unit on September 19, 2012. The Tenant said she paid the Landlord the \$1,000.00 compensation. The Tenant continued to say that she has made this application because she understood the \$1,000.00 was for lost rent, but when the Landlord had new tenants move in on October 1, 2012, the Tenant is now requesting the return of her \$1,000.00. The Tenant continued to say that the Landlord has not returned her security deposit of \$700.00, so she is applying for the recovery of the security deposit as well.

The Tenant said she understands that she is entitled to double the deposit, but she only requested it because she was told to when she made her application.

The Tenant said there was no move in or move out condition inspection reports completed and signed by the Landlord. As well the Tenant said she gave the Landlord her forwarding address in writing on November 13, 2012. The Tenant said her claim is for \$2,400.00 representing double her security deposit in the amount of \$1,400.00 and the return of the \$1,000.00 she paid the Landlord to break the tenancy agreement.

The Landlord said they did not do a move in and move out inspection report on the approved form, but they did a walkthrough of the unit at the start and end of the tenancy. The Landlord said there is a note about things the Tenant requested to be repaired at the start of the tenancy and a note that the Tenant agreed to pay for the repairs to the bathroom at the end of the tenancy. The move out note does not mention the security deposit or any amount of money to repair the bathroom. The Tenant said she was under duress when she signed this note. The Landlord said they have been landlords for over 5 years, but they did not know that they had to completed a move in and move out condition inspection report on an approved form.

The Landlord continued to say that they were surprised that the Tenant was applying for the return of the \$1,000.00 as they understood it was compensation for breaking the tenancy agreement. The Landlord said the note signed by the Tenant does not say anything about loss rent or that it would be returned if they found a new tenant for October 1, 2012.

The Landlord continued to say that the Tenant damaged the rental unit and that is why they kept the security deposit. The Landlord said there was damage to the bathroom wall, a ring of grass in the yard had to be reseeded, there was damage to the garage and they had to haul garbage away that the Tenant left at the rental unit. The Landlord said they believe they dealt with the Tenant in a human way and thought they had an agreement on how the tenancy was going to end. The Landlord said they included the notes in the evidence package showing the Tenant agreed to fix the bathroom wall, that she agreed to pay the Landlord \$1,000.00 to end the tenancy and they include a receipt for \$600.00 to repair the wall in the bathroom.

The Landlord said in closing that they dealt with this tenancy in a human way and they do not think they are responsible to return either the Tenant's security deposit or the \$1,000.00 the Tenant paid to end the tenancy.

The Tenant said in closing that she has not received her security deposit back and she believes that the Landlord should return the \$1,000.00 that she paid the Landlord as the Landlord got a new tenant October 1, 2012 so the Landlords' are not out any rent.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit for damage to the unit is extinguished. I find the Landlord has not completed a move in condition inspection report or a move out condition report on approved forms. Therefore, I find the condition inspection reports have not been completed as required by the Act and regulations. Consequently the Landlords' right to claim against the Tenants' security deposit for **damage to the unit is extinguished.**

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 November 13, 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 \$700.00 in the amount of $\$700.00 \times 2 = \$1,400.00$.

And section 44 (2)(a) says a tenant may end a fixed term tenancy by giving the Landlord written notice not earlier than one month after the landlord receives that notice and it is not earlier than the date specified in the tenancy agreement **unless agreed to by the landlord** and is based on the day of the month the rent is normally paid.

I find the Tenant and Landlord agreed in writing on September 18, 2012 to end the tenancy early and the Tenant agreed to pay the Landlord \$1,000.00 to do this. There are no conditions or references to the return of the \$1,000.00 fee if the Landlord re-rented the unit; therefore I dismiss the Tenant's claim for the return of the fee of \$1,000.00 that the Tenant paid the Landlord to end the tenancy early.

As the Tenant was partially successful in this matter I further order the Tenant to recover the filing fee of \$50.00 from the Landlord. Pursuant to section 38 and 72 a monetary order for \$1,450.00 will be issued to the Tenant. This Monetary order represents double the security deposit and the filing fee:

Double the security deposit	\$1,400.00	
Filing Fee	\$ 50.00	
Balance owing to the Tenant		\$1,450.00

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 \$1,450.00 to the Tenant. The order must be served on the Respondents 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: March 11, 2013

Residential Tenancy Branch

