



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 compensation for loss or damage under the Act, regulations or tenancy agreement and to recover 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 December 22, 2012. The Tenant provided a tracking number and Canada Post receipt for the registered mail. 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 parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is there loss or damage and is the Tenant entitled to compensation for the loss or damage?

Background and Evidence

This tenancy started on November 1, 2011 as a month to month tenancy. Rent was \$700.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$350.00 in November, 2011.

The Tenant said that he moved out of the rental unit on October 31, 2012 and gave the Landlord a forwarding address in writing on November 22, 2012 and again with the hearing package on December 22, 2012. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that he cleaned the unit before leaving and he asked the Landlord for his security deposit back. The Tenant said the Landlord has not returned his security deposit. The Landlord said he has not returned the Tenant’s security deposit of \$350.00 as he believes the Tenant owes him money.

The Tenant continued to say the reason he moved out of the rental unit is that the Landlord turned the heat off in May, 2012 and the Tenant said although he requested the Landlord to turn the heat back on over 15 times between May, 2012 and October, 2012 the Landlord did not turn the heat on. The Tenant provide a letter dated October 18, 2012 indicating the heat was not working for the last 6 months and requesting it to be repaired. The Landlord said there was a heating problem and he sent his brother over to fix it. The Landlord did not submit any evidence to show that the heat in the rental unit was operating during the period of May to October, 2012. The Tenant said they moved out of the rental unit because there was no heat. The Tenant continued to say that he is claiming \$5,000.00 as compensation due to loss of quiet enjoyment of the rental unit due to no heat. The Tenant said his Settlement Worker told him to claim the amount of \$5,000.00. The Landlord said the Tenant was not telling the truth about the heat in the rental unit.

The Tenant continued to say the Landlord increased his rent from \$700.00 to \$750.00 for the months of September, 2012 and October, 2012 without giving the Tenant proper notice. The Tenant said he is requesting the return of the \$50.00 rent increase for the two months in the amount of \$100.00. Landlord said the rent increases were agreed to at the start of the tenancy. The Tenant said the tenancy agreement states a rent of \$700.00. The Landlord said there was no written tenancy agreement. The Tenant said he requested a tenancy agreement so that he could prove residency to the school so his children could be enrolled in the school. The Tenant said the Landlord's brother gave him a signed tenancy agreement and then he signed it and gave the brother a copy of the agreement. The Landlord said the Tenant was not telling the truth. The Tenant said he was telling the truth.

The Tenant continued to say that clause 15 of the tenancy agreement also states that cable and internet is included in the tenancy agreement. The Tenant said the Landlord did not provide these services and so he got cable and internet installed and he paid \$1,059.67 for these services over the tenancy. The Tenant provided receipts and bank statements as proof that he paid for these services. The Tenant said he is claiming these costs as the tenancy agreement states these costs are the responsibility of the Landlord. The Landlord said there was no written tenancy agreement and he did not agree to included cable and internet in the tenancy agreement.

The Landlord said in closing that the Tenant's claims are not truthful and he rented a new unit to the Tenant at a low rate to help the Tenant on his arrival to Canada.

The Tenant said that he did receive a signed tenancy agreement from the Landlord's brother and he is only requesting compensation for things that were included in the tenancy agreement. The Tenant said his total claim is for \$6,509.67 plus the \$100.00 filing fee for this proceeding.

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 November 22, 2012 and again with the Hearing package in December, 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 \$350.00 in the amount of $\$350.00 \times 2 = \700.00 .

Section 41 (1) of the Act says a Landlord must not increase the rent within the first 12 months of the tenancy. I accept the Tenant's testimony and evidence that a written tenancy agreement was entered into and I accept the copy of the tenancy agreement signed and dated November 1, 2011. Consequently a rent increase for this tenancy before November 1, 2013 is a violation of the Act and is not valid; therefore I find the Tenant has established grounds to recover the rent increases for September and October, 2012 in the amount of \$100.00.

In addition clause 15 of the tenancy agreement states that cable and internet services are included in the tenancy. The Tenant said the Landlord did not provide these services as agreed and he incurred costs to have the services provided. The Tenant provided receipts and bank statements to prove the loss he incurred was \$1,059.67. I find for the Tenant and award the Tenant \$1,059.67 for cable and internet services agreed to in the tenancy agreement, but not provided by the Landlord.

With respect to the Tenants claim for loss of quiet enjoyment in the amount of \$5,000.00 for not having heat in the rental unit from May 2012 to October 2012, I find this a serious situation as the Tenant has young children. I accept the Tenant's testimony and evidence that the Landlord knew the heat was not on in the rental unit and the Landlord knew his brother had not fixed the heating system. As well clause 15 of the tenancy agreement states the Landlord is responsible for electricity and natural gas for the rental unit therefore it is clear that the Landlord was responsible for the heat in the rental unit. I find the rental unit was without heat from May, 2012 to October 2012. I do understand that this time period was during the summer when there are less demands on a heating system and that there were no health issues as a result of not having a heating system, but this does not diminish the Landlord's responsibility to provide heat to the rental unit. Consequently I award the Tenant \$300.00 for each month from May to October, 2012 for the lack of heat in the unit. The award to the Tenant for the Landlord not providing heat in the rental unit is \$1,800.00.

As the Tenant has been 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 \$3,759.67 has been issued to the Tenant. This Monetary order represents the following:

Double the security deposit	\$ 700.00	
Return of rent increase	\$ 100.00	
Recover cable and internet costs	\$1,059.67	
Loss of quiet enjoyment	\$1,800.00	
Filing fee	\$ 100.00	
Sub Total		\$3,759.67
Balance owing to the Tenant		\$3,759.67

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 & 72 of the Act, I grant a Monetary Order for \$3,759.67 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: March 13, 2013

Residential Tenancy Branch

