



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 he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 11, 2013. 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 in the Landlord’s absences.

This is the second Hearing with respect to this tenancy. The previous hearing was held on November 27, 2012 and both the applications made by the Landlord and the Tenant were dismissed. The Landlord’s application was dismissed without leave to reapply. The Tenant’s application for the return of the security deposit was dismissed with leave to reapply and the Tenant’s application to cancel Notices to End Tenancy, for a rent reduction, for the Landlord to provide services and facilities, for an Order of Possession and to change the locks were all dismissed without leave to reapply.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on September 1, 2011 as a month to month tenancy. The tenancy ended November 1, 2012. Rent was initially \$550.00 and then increased to \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$275.00. No move in or move out condition inspection reports were done.

The Tenant said that he moved out of the rental unit on November 1, 2012 and gave the Landlord a forwarding address in writing on December 3, 2012. The Tenant said he provided a registered mail receipt and tracking information in his evidence to verify the Landlord received his forwarding address. The Tenant said he has not received his security deposit back as of yet.

As well the tenant said he believes the Landlord stole medical forms from his room which costs him \$500.00 to replace. The Tenant said he noticed that his rental unit was entered when he was away and he believes it was the Landlord coming in. The Tenant said he believes the Landlord stole the forms because the Landlord had access to his rental unit. The Tenant also said the Landlord's family consisted of two parents and two children. The Tenant continued to say his nephew and his parents had access to his unit, but he does not believe they took the medical forms. The Tenant said he is claiming the cost to replace the medical forms of \$500.00 and he has included the original receipt and the replacement receipt for the forms.

In addition the Tenant said the Landlord increased his rent from \$550.00 to \$600.00 in the first month of the tenancy because the other tenant in the rental unit moved out. The Tenant continued to say there were a number of other issues in the unit as well, including no heat and a stove that only partially worked. As a result of these issues the Tenant said he is claiming \$50.00 a month for the 13 months that he lived in the rental unit. The Tenant said he is claiming \$650.00 in total for these issues.

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 accept the Tenant's testimony that he gave the Landlord a forwarding address in writing on December 3, 2012 by registered mail. 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 by December 23, 2012. Consequently I find for the Tenant and grant an order for double the security deposit of \$275.00 in the amount of $\$275.00 \times 2 = \550.00 .

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 claim for the replacement cost of the medical forms of \$500.00, it is the Tenant belief and testimony that the Landlord stole the medical forms, but the Tenant does not have any corroborating evidence that proves the Landlord took the forms. The burden of proving a claim lies with the applicant and when it is just the applicant's word that burden of proof is not met. I find the Tenant has not established grounds to prove the Landlord stole the Tenant's medical forms. Consequently, I dismiss without leave to reapply the Tenant's claim of \$500.00 against the Landlord for the replacement cost of the medical forms.

Further as the Landlord increased the rent from \$550.00 to \$600.00 not in accordance to the Act, I find the Tenant has established grounds for his claim of \$50.00 per month for 13 months for the rent increase and for the heating and stove issues. I award the Tenant \$650.00 to satisfy these claims.

As the Tenant was partially successful in this matter I order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$1,250.00 has been issued to the Tenant. This Monetary order represents double the security deposit of \$550.00, damage or loss of \$650.00 and the filing fee of \$50.00 for a total amount of \$1,250.00.

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 \$1,250.00 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: March 25, 2013

Residential Tenancy Branch

