



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 an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for: the return of double their security deposit; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The Tenant affirmed that the Landlord was served copies of the application for dispute resolution and notice of hearing documents by registered mail on January 16, 2013. Canada Post tracking receipts and copies of the refused registered mail were provided in the Tenant's evidence. Case law has established that refusal of registered mail does not avoid service. Based on the submissions of Tenant I find the Landlord is deemed served notice of this proceeding effective January 21, 2013, pursuant to section 90 of the Act, and I continued in the Landlord's absence.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: her written statement; cheques issued to the Landlord for rent; carpet cleaning receipt; text messages between Tenant and Landlord; Canada Post receipts; return of registered mail package; moving receipts; notice to end tenancy issued by Tenant.

The Tenant stated that she entered into a one year fixed term written lease that began on March 1, 2012. Rent was payable on the last day of each month in the amount of \$1,200.00 and she paid a security deposit of \$600.00 plus a pet deposit of \$300.00 in mid February 2012 when she signed the lease.

On October 31, 2012 the Tenant personally delivered her notice to end tenancy. She vacated the property on December 1, 2012. The Landlord attended the rental property on December 1, 2012 at 3:00 p.m. to transfer the keys to the new tenants at which time the Tenant provided him with her forwarding address in writing. The Landlord did not provide her with a copy of the lease or the Strata K forms. The Landlord did not complete a move in condition inspection report form nor did he complete a move out inspection. Another tenant was moving in December 1, 2012.

The Tenant submitted that the Landlord failed to have the rental unit properly cleaned for the onset of their tenancy and he later agreed to reimburse her if she paid to have the carpet cleaned. The continued to avoid their requests to be reimbursed for cleaning and he refused to complete repairs to the rental unit.

She is seeking a monetary order for double her deposits of \$1,800.00; the cost of the carpet cleaning \$110.88; and her moving costs of \$103.04. She is of the opinion that because the Landlord failed to maintain the unit and failed to provide them with the Strata documents he is responsible to pay for their move. She did not file for dispute resolution to have these matters resolved prior to her move because she was told the Landlord would not comply.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

Residential Tenancy Policy Guideline # 1 stipulates that at the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.

Based on the undisputed evidence I find the Tenant is entitled to recover the cost of carpet cleaning at the onset of the tenancy. Accordingly, I award the Tenant carpet cleaning costs of **\$110.88**.

This tenancy ended December 1, 2012, and the Tenant provided the Landlord with her forwarding address on December 1, 2012, at 3:00 p.m.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than December 16, 2012. He did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit and pet deposit plus interest in the amount of **\$1,800.00** (2 x \$600.00 + 2 x \$300.00 + \$0.00 interest).

The Tenant has sought to recover her moving costs in the amount of \$103.04. Upon review of the above I find there is insufficient evidence to prove the Tenant mitigated her loss; rather she made a choice to incur the cost of moving instead of bringing her concerns to dispute resolution to have them resolved. Accordingly, I dismiss her claim for moving costs.

I find that the Tenant has primarily succeeded with her application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,960.88** (\$110.88 + \$1,800.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed

with the Province of British Columbia Small Claims Court and enforced 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: April 08, 2013

Residential Tenancy Branch