



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF; O

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; a monetary order for double the amount of the security deposit; for "other" relief; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that the Notice of Hearing documents and copies of the Tenant's documentary evidence were mailed to the Landlord, via registered mail, to the Landlord's address for service, on January 7, 2013. The Tenant provided the original registered mail receipt in evidence. I search of the tracking numbers on the Canada Post web site indicates that the documents were successfully delivered to the Landlord on January 14, 2013.

I am satisfied that the Landlord was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing proceeded in his absence.

Preliminary Matters

Section 60 of the Act requires applications to be made within 2 years of the date that the tenancy ends or is assigned. The Tenant filed her Application for Dispute Resolution on January 4, 2013. The Tenant stated that she moved out of the rental unit on December 28, 2010; however, she paid rent for the month of January, 2011, and on January 5, 2011, the parties signed a mutual agreement to end the tenancy effective January 31, 2011. The Tenant provided a copy of the Mutual Agreement to End the Tenancy in evidence. Therefore, I find that the tenancy ended on January 31, 2011 and that the Tenant filed her Application within the time required under Section 60 of the Act.

The Tenant's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide sufficient details in her Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is dismissed.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to compensation for moving expenses, storage fees and the cost of a visit to the chiropractor?

Background and Evidence

The rental unit is a lower suite of a house. Another occupant lives in an upper suite.

A copy of the tenancy agreement was provided in evidence. This tenancy began on September 1, 2010. Monthly rent was \$750.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 on September 1, 2010.

The Tenant testified that the Landlord did not require the Tenant to participate in a Condition Inspection at the beginning or the end of the tenancy, so she completed her own Condition Inspection. The Tenant also took photographs of the rental unit at the time she took possession. Copies of the move-in Condition Inspection and photographs of the rental unit were provided in evidence.

The Tenant stated that she discovered mould in the rental unit and advised the Landlord, who said he would be back in town in October and would address it then. She stated that the Landlord did not come to get rid of the mould in October, nor did he send anyone else to take care of it.

The Tenant stated that she did not meet the Landlord until December 24, 2010, when he showed up unannounced at the rental unit and demanded that she remove her washer and dryer from the common workshop area (garage). The Tenant stated that she was surprised by his abruptness and told the Landlord that she was selling the washer and dryer, so it would not be there long. The Tenant testified that the Landlord was very rude and told her she had to move it and that she could not use the common area.

The Tenant stated that she and her son were away for Christmas, returning to the rental unit on Boxing Day. She stated that the Landlord came unannounced again on December 27, 2010. She stated that he was very brusque again, ordering the Tenant to hire someone to remove her outdoor patio furniture from the garden area, and saying that if she didn't move it and her washer and dryer immediately he would get rid of it. The Tenant said she was shocked, but did as she was asked because at the time she was not aware of her rights.

The Tenant stated that she called a company that rents moving vans and was able to book a truck right away, but had to move the furniture with the help of her son and pay for storage. The Tenant stated that she has a bad back as a result of a T12 fracture many years ago and that she moving the furniture and appliances caused injury to her back. The Tenant seeks to recover the cost of visiting the chiropractor to ease her back pain.

The Tenant seeks compensation for the cost of the storage until she was able to secure other accommodation.

The Tenant submitted that denial of access or the right to use the common areas, including the garden, was not noted on the tenancy agreement. She stated that the rental advertisement actually suggested the opposite. The tenant provided a copy of the on-line advertisement, which describes the rental unit as, "in a private home, quiet neighbourhood, lots of parking, separate entrance, large well treed back garden with well lit walkway". The Tenant testified that during a telephone conversation with the Landlord on August 15, 2010, the Landlord advised her that there was a lot of storage at the rental unit and that she could use the workshop if needed.

The Tenant testified that the Landlord locked the door to the garage, which was her secondary exit in the event of a fire.

The Tenant testified that she gave the Landlord written notification of her forwarding address on December 31, 2010.

The Tenant stated that she did not agree that the Landlord could retain any of the security deposit, but the Landlord has not returned any of it.

In support of her application, the Tenant provided copies of the invoices for:

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|--|----------------|
| Storage fees (December 28, 2010 to January 27, 2011) | \$162.34 |
| Cost of renting van and appliance dolly (from December 27 to 28) | \$65.14 |
| Chiropractor's invoice dated December 30, 2010 | \$40.00 |
| Cost of renting van and appliance dolly (from January 28 to 29) | \$95.61 |
| Estimated cost of fuel for van, December, 2010 (lost receipt) | \$40.00 |
| Cost of fuel for van, January, 2011 (receipt dated January 28, 2011) | <u>\$20.16</u> |
| Total claim for compensation for damage or loss | \$423.25 |

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Based on the undisputed testimony of the Tenant and the documentary evidence provided, I find that the Landlord received the Tenant's forwarding address in writing on December 31, 2010. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, in the amount of **\$750.00**.

I accept the Tenant's undisputed testimony in its entirety. I find that the Landlord breached Sections 28 and 30(1) of the Act that that the Tenant suffered a loss as a result of that breach. I allow the Tenant's claim for compensation as submitted, in the amount of **\$423.25**.

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$1,223.25** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 17, 2013

Residential Tenancy Branch

