



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF

Introduction

This is the Tenant's application for compensation under the Act, regulation or tenancy agreement; for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail, sent on February 4, 2013.

The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. Monthly rent was \$950.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00.

The Tenant moved into the rental unit on November 21, 2012, and paid \$250.00 for early possession. The Tenant testified that within a few days of moving into the rental unit, she decided to move in with her boyfriend and gave the Landlord notice to end the tenancy effective December 30, 2012. The Tenant left the rental unit on November 27, 2012 and did not return until December 8, 2012, when she packed most of her belongings and left again on December 9, 2012. The Tenant stated that the Landlord

“moved in” to the rental unit on December 12, 2012, without the Tenant's permission and ate her food and slept in her bed.

There was no condition inspection report completed at the beginning or the end of the tenancy.

The Tenant testified that the Landlord has not returned any of the security deposit. She stated that she did not give the Landlord permission to retain any of the security deposit.

The Landlord stated that she tried to return the security deposit, but the Tenant would not accept it. She stated that she didn't really want to buy the Tenant's bed, but she bought it anyway because she was afraid of the Tenant. The Landlord stated that because she bought the Tenant's bed, she thought it was OK for her to stay in the rental unit.

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.

I find that the Landlord received the Tenant's forwarding address in writing in early February, when she received the Notice of Hearing documents containing the Tenant's Application for Dispute Resolution. The Landlord has not returned any of the security deposit and has not made an application for dispute resolution claiming against the security deposit.

Therefore, I find that the Tenant is entitled to return of the security deposit, in the amount of **\$475.00**. 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 grant the Tenant a Monetary Order in the amount of **\$525.00** 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: May 06, 2013

Residential Tenancy Branch

