



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bright Star Investment
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, OLC and FF

Introduction

This hearing was convened on the tenant's application of June 7, 2013. It is the fourth hearing on this tenancy since April 5, 2013 and as the application was made prior to another hearing on June 11, 2013, the outcome of that hearing has impacted the present application.

Specifically, the tenant's request for return of his security deposit has been ordered returned by agreement and the tenancy has ended.

Remaining in the tenant's application is a claim for a Monetary Order in lieu of previous monetary awards granted as the right to free rent and a claim for moving expenses.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to replace a previous monetary award given in the form of rent abatement? Is the tenant entitled to an award for moving expenses?

Background and Evidence

This tenancy began on January 1, 2000 and ended on or about June 11, 2013 when the tenancy ended pursuant to a settlement agreement reached at the previous hearing.

To put matters in context, this tenancy was the subject of previous hearings on April 5, 2013, April 29, 2013 and June 11, 2013.

The first hearing dealt with the tenant's application for emergency repairs. In the result, the arbitrator issued orders for the landlord to make repairs to the rental unit including replacement of the flooring, repair of cupboards and plumbing, painting of the kitchen and professional evaluation of a possibly failing window. The tenant was ordered to deal with a meal moth problem caused by him. The orders required the work to be done by May 15, 2013 and the tenant was ordered to cooperate with the landlord by providing access and removing items as necessary.

The second hearing dealt with applications by both parties. The landlord's request for an Order of Possession pursuant to a Notice to End Tenancy for cause was dismissed for want of evidence. The tenant's request for repairs was dismissed as *res judicata* because of the first hearing. While the tenant's claim for reimbursement for asbestos testing was dismissed as he had ordered the testing on his own initiative without consultation with the landlord, the arbitrator did order the landlord to review the results and take appropriate action. Taking into account deficiencies in the rental unit, painting done by the tenant and alternate accommodation, the arbitrator ruled that, assuming May 2013 rent would be paid by the time parties received the decision, the tenant was entitled to a monetary award equalling one and one-half months' rent and ordered that the tenant could withhold the amounts from the June and July 2013 rents respectively.

The third hearing dealt with the landlord's application for an Order of Possession pursuant to a Notice to End Tenant for unpaid rent, a monetary award for the unpaid rent and authorization to retain the security deposit in set off. The parties arrived at a settlement agreement that the landlord would have the Order of Possession and the tenant would have the Security Deposit returned.

As this hearing was already scheduled, the arbitrator deferred the remaining monetary disputes to the present.

In the present application, as the tenancy ended before the tenant could recover the previous awards through rent abatement, he seeks a Monetary Order in lieu.

In addition, the tenant seeks moving expenses which I advised are not available as the tenancy ended by mutual agreement.

In addition, during the last hearing, the parties had been in disagreement over whether the tenant had paid the May 2013 rent. The arbitrator put the tenant on notice he would have to provide conclusive evidence at the present hearing that the May rent had been paid. The tenant did not provide additional documentary evidence that would prove payment.

Settlement Agreement

In an effort to bring this matter to conclusion, both parties compromised in arriving at the following consent agreement:

1. The settlement assumes that the May 2013 was not paid and the one-month free rent credit granted to the tenant in the second hearing was utilized for that purpose;
2. The one-half month's free rent, \$389.50 remains due to the tenant;
3. The tenant is credited for \$100 in filing fees awarded in previous hearings, but not satisfied by rent abatement;
4. The tenant is credited return of the security deposit of \$275 plus \$24.33 interest, a total of \$299.33. The present Monetary Order will include the previous award for the security deposit and replaces the Monetary Order issued on June 11, 2013 which is now void. If the amount has already been paid, it must be deducted from the total Monetary Order issued herewith;
5. The landlord is credited \$65 to replace a key fob which was not returned;
6. The tenant's agent gives full consent for the landlord to empty locker #4 which was assigned to the tenant and to dispose any contents or other materials left behind by the tenant. The parties agree that the landlord is to be credited \$100 for the cost of disposal;

7. The parties concur that this constitutes full and final settlement of all matters pertaining to this tenancy and neither bring make any further application against the other with respect to the tenancy.

Thus, I find that the Monetary Order awarded to the tenant is calculated as follows:

Award of one-half month's rent	\$389.50
Filing fee awards still outstanding	100.00
Security deposit plus interest (cancels Monetary Order of June 11, 2013)	<u>299.33</u>
Sub total	\$788.83
Less cost to replace key fob	- 65.00
Less cost of disposal of materials left behind by tenant	<u>- 100.00</u>
TOTAL	\$623.83

The tenant's copy of this decision is accompanied by an Monetary Order, enforceable through the Provincial Court of British Columbia for \$623.83 for service on the landlord. This Order replaces the order issued on June 11, 2013.

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: July 09, 2013

Residential Tenancy Branch