



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and MNDC

Introduction

This hearing was convened on the tenant's application of April 18, 2013 seeking a monetary award to double her security deposit after it was returned late, for loss of quiet enjoyment and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on April 19, 2013, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for an amount that would duplicate her security deposit returned late and additional compensation for loss of quiet enjoyment?

Background and Evidence

This tenancy began on December 1, 2012 under a fixed term rental agreement set to end on August 15, 2013. Rent was \$800 per month and the landlord held a security deposit of \$400 paid at the beginning of the tenancy. The rental unit is the basement suite in the landlord's residence.

During the hearing, the tenant gave evidence that, due to frequent disturbances, particularly early in the morning, she gave notice on February 28, 2013 that she would be leaving the tenancy at the end of March 2013.

The tenant provided her forwarding address with her notice to end the tenancy and returned the keys on March 29, 2013. However, she stated that her security deposit was not returned until April 19, 2013 and was post marked April 18, 2013.

The tenant stated that she had advertised and was able to find a new tenant to move in to the rental unit on April 1, 2013. Therefore, the landlord did not suffer a loss of rent as a result of the tenant leaving the fixed term agreement early.

With respect to the matter of loss of quiet enjoyment, the tenant submitted a diary including 28 incidents during the four-month tenancy. She also submitted statements from friends and family members corroborating her claim that the frequency of disturbance was beyond the norm and at times outside of reasonable hours.

Disturbances were recorded often as early as 5:30 a.m. and included the barking of the landlord's dog, use of the laundry, heavy footsteps and the landlord's children practicing their musical instruments. The tenant stated that the landlord had entered her suite without notice or consent on more than one occasion (including a visit by the landlord's dog when it left a calling card). The landlord had also restricted the length of the tenant's showers and removed her laundry privileges.

The tenant stated that on many occasions, she was forced to return to her family home in order to get a full night's rest, and the landlord was less than receptive to her pleadings for greater consideration.

Analysis

With respect to the late security deposit, section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them.

Section 38(6) of the *Act* states 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 deposits.

Section 38(4)(a) removes the obligation if, "... at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant..."

In the present matter, I must find that the landlord breached section 38(1) of the *Act* by returning the security deposit after the prescribed 15-day time limit. Therefore I find that the landlord must return an additional \$400 to satisfy the mandatory doubling set by section 38(6).

I further find that the tenant has established a claim for loss of quiet enjoyment and I set the value of that loss at \$50 per month for a total of \$200.

As the application has succeeded, I find that the tenant is entitled to recover the \$50 filing fee for this proceeding from the landlord.

Thus, I find that the tenant is entitled to a Monetary Order for \$650.00.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order \$650.00, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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 08, 2013

Residential Tenancy Branch

