



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and MNSD

Introduction

This hearing was convened on the tenant's application of May 6, 2013 seeking a Monetary Order for return of rent paid for a period following the end of the tenancy and for return of his security deposit and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for the claims submitted and must the security deposit portion be doubled?

Background and Evidence

The parties were not certain as to the exact date, but agree that the tenancy began nine years ago, in 2004. Rent was \$610 per month at the end of the tenancy. The tenant stated that he had paid a \$375 security deposit at the beginning of the tenancy. The landlord agreed that the deposit was paid but stated that the amount was only \$275. In the absence of any documentary evidence of the amount paid, I must accept the lower figure as the uncontested amount.

The parties concur that the landlord served the tenant on February 28, 2013 with a notice to vacate. Neither party submitted a copy of the notice but the landlord stated it was for cause but set an end of tenancy date of April 30, 2013, two months from service.

The tenant vacated on or about March 24, 2013 and seeks return of the balance of the March rent and the full rent for April 2013. The parties concurred that the tenant had vacated at the request of police officers following an incident in which her had threatened the landlord with a cleaver. The tenant said that incident resulted from the landlord entering the unit without notice and without knocking on the door.

The landlord stated that when he gave the tenant notice, he had told him that he did not have to pay rent for April 2013, and the tenant never did pay that rent. The tenant believes he did pay the rent for April 2013 but has provided no documentary or corroborating evidence to prove the claim.

With respect to the security deposit, the parties concur that that tenant did provide a forwarding address and submitted into evidence a copy of a letter dated April 19, 2013 requesting return of the deposit and the rent for April and the balance of March 2013.

The landlord stated that he did not return the deposit because the tenant had left the rental unit in need of cleaning and repairs.

Analysis

As to the tenant's claim for return of the rent, in the absence of any documentary or corroborating evidence, I must find that the tenant has failed to prove he paid the rent for April 2013. As to the balance of the March 2013 rent, in view of the cleaver incident, I must find that the tenant left the tenancy early as a result of his own choice and/or his own conduct. Therefore, the claim for return of rent is dismissed without leave to reapply.

With respect to the tenant's request for return of the security deposit, without proof of the amount, as noted, I find as fact that the tenant paid at least \$275 and I set the time off payment as nine years ago from today's date.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenants' forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenants have agreed otherwise in writing as per section 38(4).

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 tenants double the amount of the deposits.

In the present matter, I find that the landlord breached section 38(1) of the *Act* by failing to return the deposit or to make application for dispute resolution to claim against it.

Therefore, I find that the landlord must return the security deposit in double and must pay interest on the bare amount.

As the application has succeeded on its merits, 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 calculated as follows:

Security deposit	\$275.00
To double security deposit re section 38(6) of the <i>Act</i>	275.00
Interest on bare deposit from July 29, 2004	9.75
Filing fee	50.00
TOTAL	\$609.75

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$609.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord. The landlord remains at liberty to make application on his claims in damages.

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 29, 2013

Residential Tenancy Branch