Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of double the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Preliminary Matters

This 2nd hearing reconvened with both landlords and the tenant present. Each party was affirmed. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided. The parties confirmed receipt of all evidence.

The application was amended to include the male landlord.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid?

Is the tenant entitled to compensation in the sum of $866.00 for heating oil?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced in July 2008 and each year the parties would alter the agreement, extending the term of the term agreement.

Rent was $1,300.00 per month, due on the 1st day of each month. The parties agreed that a security deposit in the sum of $650.00 was paid on July 1, 2008 and transferred to each new tenancy. A copy of the tenancy agreement was supplied as evidence.

A move-in condition report was not completed; the copy supplied only indicated a move-out inspection.

The tenant was issued a 2 month Notice ending tenancy for landlord's use and on July 21, 2013 the parties signed a mutual agreement to end the tenancy effective July 31, 2013. A copy of that agreement was supplied as evidence.

On June 29, 2013 the tenant sent the landlord an email indicating the oil tank was over one-half full; the tenant asked the landlord to consider this when selling the home. A response was not supplied as evidence.

There was no dispute that the landlord was given the tenant's written forwarding address and that the landlord had the address on the last day of the tenancy. A July 21, 2013 letter was given to the landlord by the tenant, which provided the tenant's forwarding address. A copy of this letter was supplied as evidence.

A move-out inspection was completed and signed on August 1, 2013; the tenant agreed she would remove some wood and a bar–b-q from the backyard. The report also included the tenant's forwarding address. The tenant did not sign, agreeing to any deduction from the deposit.

The landlord said that the tenant agreed to remove the items from the backyard by August 1, 2013.

The landlord provided a copy of an email sent to the tenant on August 7, 2013 in which they told the tenant she was to remove the wood from the yard and, as she had failed to do so, she would no longer be entitled to remove the wood. As the tenant had failed to remove the wood the landlord said they would not return the security deposit.

There was no dispute that on August 22, 2013 the tenant received a cheque in the sum of $650.00. During the hearing the landlord said they were confident they mailed the cheque to the tenant on August 18, 2013. The tenant attempted to read the date stamp on the envelope, but it was indecipherable. An email dated August 16, 2013, supplied as evidence indicated the security deposit cheque "is in the mail."

The rental unit was heated with oil. The tenant said that in April 2013 she filled the oil tank; shortly afterward she received the Notice ending tenancy. When the tenant vacated she measured the tank and had an oil company estimate the amount of oil left in the tank. A letter from Columbia Fuels indicated that, based on the information provided by the tenant, the value of the oil was $866.00.

The tenant's July 21, 2013 letter to the landlord indicated that they had discussed the heating oil and that the tenant had dipped the tank, as suggested by the heating oil company. The tenant offered to compromise on the sum she would receive as compensation.

The tenant did not supply a copy of the April oil purchase invoice; the landlord said they were not given a copy of an invoice.

The tenant said she could have had the oil pumped from the tank for a fee of $130.00, but she did not have anywhere to put the oil. The tenant said when she moved into the unit the oil tank was empty.

The landlord said they did not know what happened to any oil that might have been left in the tank; the home was sold.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord was mistaken when they emailed the tenant on August 7, 2013, telling her they would not return the deposit. They did not have the tenant's written permission to retain the deposit. However; from the evidence before me it appears the landlord did place a cheque in the mail on August 16 or 18, 2013. There was no evidence that the landlord had mailed the deposit cheque on August 15, 2013.

As the landlord failed to place the cheque in the mail within 15 days of July 31, 2013, I find that the landlord breached the Act. The landlord was required to return the deposit no later than August 15, 2013. Therefore, I find that the tenant is entitled to return of double the $650.00 security deposit; less the $650.00 she has already received.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of a term of the tenancy agreement that detailed the amount of oil in the tank at the start of the tenancy I find that there was no expectation the tenant was required to leave any oil in the tank.

Residential Tenancy Branch policy suggests that when a tenant leaves property after vacating, the landlord must retain that property, if the value exceeds $500.00, for at least 2 years. However, the only evidence of the value of the oil was a letter issued by the oil company, based on information that had been provided by the tenant. The

tenant did not supply a copy of the invoice for the oil she purchased, which would have verified the sum spent in April, 2013.

Therefore, in the absence of evidence, independent of the tenant's measuring of the tank, such as an invoice verifying the amount of oil purchased, I find, on the balance of probabilities, that the claim for the cost of oil is dismissed. Verification of the sum purchased and that date of that purchase was a critical piece of evidence that could verify the tenant's submission.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the $50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for $700.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

Conclusion

The tenant is entitled to return of double the security deposit; less the sum previously returned.

The tenant is entitled to filing fee costs.

The balance of the claim is dismissed.

This final decision should be read in conjunction with the November 28, 2013 interim decision.

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: February 3, 2014

Residential Tenancy Branch