



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This matter dealt with an application by the Tenant for the return of the security deposit and compensation for loss or damage under the Act, regulations or tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on December 5, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is there a loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to compensation for the loss or damage and is so how much?

Background and Evidence

This tenancy started on May 1, 2013 as a month to month tenancy. Rent was \$500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250 at the start of the tenancy. The Tenant said no move in or move out inspection reports were done. The Landlord’s agent said a move in inspection report was done, but not submitted into evidence and no move out inspections report was completed as the Tenant had moved away.

The Tenant said he gave the Landlord verbal notice in August, 2013 that he was moving out of the unit in September, 2013. The Tenant said he paid the September rent and started making arrangement to move to a different city. The Tenant continued to say he sent his family to collect his belongings and clean the unit at the end of September, 2013 and his family found the rental unit was occupied by new tenants. The new tenants told the family members the Landlord had removed the Tenant’s belongings and

they were renting the unit now. The Landlord's agent confirmed that they rented the unit to new tenants on September 28 or 29, 2013. The Landlord's agent also said they were told by the Tenant in mid September that he was not coming back and they could do what they wanted with his belonging. The Tenant said he did not tell the Landlord to dispose of his belongings and he had organized his family to come to the unit for his belongings and to clean it. The Tenant continued to say that he has submitted a list of his belongings with estimated values in his evidence package. The Tenant said he is claiming \$230.00 in compensation for his belonging. The Landlord's agent said they have that Tenant's belongings in storage and he can pick the items up any time.

The Tenant continued to say the Landlord has only returned \$150.00 of his \$250.00 security deposit. The Tenant said he asked for the full security deposit to be returned, but the Landlord said he was keeping \$100.00 because the Landlord removed the Tenant's belongings and cleaned the unit. The Landlord's agent said her father said he and the Tenant verbally agree that the Landlord could keep \$100.00 of the Tenant's security deposit. The Landlord choose not to attended the hearing therefore it was only hear say evidence from the Landlord's agent that an agreement was made between the Landlord and the Tenant to retain \$100.00 of the Tenant's security deposit. The Tenant said he did not make this agreement and he asked the Landlord for his full deposit to be returned.

The Landlord said they did not make an application to retain part or all of the Tenant's security deposit. As well the Landlord said they sent a cheque for \$150.00 to the Tenant at his forwarding address in mid October, 2013 and they returned the balance of the security deposit of \$100.00 when they received the Tenant's application. The Tenant said he received the cheque for \$150.00, but he has not received the cheque for \$100.00.

The Landlord's agent said in closing that they were surprised to receive the Tenant's application because they had a verbal agreement with the Tenant about the Tenant's belongings and the Tenant's security deposit. The Landlord said the Tenant turned his belongings over to the Landlord and the Tenant agreed the Landlord could retain \$100.00 of his security deposit.

The Tenant said in closing that there was no agreement with the Landlord about his belongings or the security deposit and he requested the return of the full deposit.

Analysis

First, in regard to the Tenant's belongings the Landlord said they have the items in storage and the Tenant can pick them up any time with advanced notice. Therefore I find the Tenant's belongings are not lost or gone and the Tenant can recover them from the Landlord with advanced notice. Consequently the Tenant has not proven a loss and therefore I dismiss without leave to reapply the Tenant's claim for compensation for loss of personal property in the amount of \$230.00.

Further with regard to the Tenant's security deposit:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find from that the Tenant did give the Landlord a forwarding address as the Landlord mailed the Tenant the partial return of the Tenant's security deposit in mid October, 2013. The Landlord did not repay the full security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address,

nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$250.00 in the amount of $\$250.00 \times 2 = \500.00 less the \$150.00 paid to the Tenant for a final amount of $\$500.00 - \$150.00 = \$350.00$.

The Tenant will receive a monetary order for the amount of \$350.00.

	Double the security deposit	\$500.00	
Less	Partial return of the security deposit	\$150.00	
	Balance owing to the Tenant		\$350.00

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$350.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: March 25, 2014

Residential Tenancy Branch

