



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, for a monetary Order for money owed or compensation for damage or loss; and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The male Tenant stated that on March 18, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On May 06, 2014 the Tenant submitted a Monetary Order Worksheet and 13 photographs to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The male Tenant stated that these documents were sent to the Landlord, via registered mail, although he could not recall the date of service, as he could not find the Canada Post receipt. The Landlord stated that she did not receive these items.

The Tenant was advised that we would be proceeding with the hearing and that if the photographs became relevant I would consider an adjournment to provide the Tenant with the opportunity to re-serve those photographs. We were able to conclude the hearing without an adjournment and this decision was made without reliance on those photographs.

On June 20, 2014 the Landlord submitted numerous documents and photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that none of the photographs and most of the documents were not served to the Tenant. As those items were not served to the Tenant they were not accepted as evidence for these proceedings.

The Landlord and the Tenant agree that a letter to the Tenants from the Landlord, dated April 15, 2014, and a copy of a plumbing bill with a note from the plumber, dated January 04, 2014, were served to the Tenant. As these documents were served to the Tenant they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit and is the Tenant entitled to compensation arising from a backed up drain?

Background and Evidence

The Landlord and the Tenant agree:

- that the tenancy began on July 15, 2011
- that a security deposit of \$525.00 was paid on June 23, 2011
- that this tenancy ended on February 28, 2014
- that the tenant provided a forwarding address, by mail, sometime in February of 2014
- that the Tenant did not authorize the Landlord to retain the security deposit
- that the Landlord did not return any portion of the security deposit
- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that she retained the security deposit because there was damage done to the rental unit. The Landlord was not permitted to discuss damages that occurred during this tenancy, with the exception of the damage resulting from the drain backing up, as other damages are not a subject of these proceedings. The Landlord was advised that she has the right to file her own Application for Dispute Resolution claiming compensation for damages to the unit.

The Landlord and the Tenant agree that the sewer backed up in the residential complex. The male Tenant stated that the blockage occurred on January 02, 2014 or January 03, 2014. The Landlord stated that it occurred on January 04, 2014.

The Landlord and the Tenant agree that the Landlord hired a plumber to clear the blockage on the day of the incident. The Landlord stated that the plumber removed paper towels, toilet paper, and a spoon from the drain line. The Landlord submitted a receipt from the plumber that corroborates this testimony.

The Landlord stated that she lives above the Tenant and she did not place the spoon in the drain.

The Landlord stated that the plumber showed the Tenants the spoon he had removed from the drain and the female Tenant told him that it was hers. The female Tenant

stated that she did not say it was hers when she looked at it, although she did state that it looked like theirs.

The male Tenant stated that after speaking with the plumber they returned home and determined that they still have all six of their small spoons, so the spoon located in the drain could not have been theirs.

The Landlord submitted a signed handwritten note that the Landlord stated was written by the plumber. In the note the plumber declared that when he showed the spoon to the Tenant she stated "How did that get in there? Thats (sic) my spoon". The male Tenant speculated that the note was actually written by the Landlord. The female Tenant denied saying that the spoon was hers.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit as a result of the damage caused by the flood. The male Tenant stated that they have been unable to use one bedroom in the rental unit since the incident and that they had to use the dining area to store some items that were in the bedroom. The parties agree that all of the flood damage was repaired by February 13, 2014, with the exception of the baseboards, which had not been attached by the end of the tenancy.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

I find, on the balance of probabilities, that the sewer line blockage was caused by a spoon that was placed in the drain, perhaps inadvertently, by the Tenant or a guest of the Tenant. In reaching this conclusion I was heavily influenced by the note from the plumber, in which he declared that the female Tenant told him the spoon was hers. As he is a seemingly unbiased party, I find this evidence compelling.

I find the declaration of the plumber to more compelling than the testimony of the Tenants, who both stated that after speaking with the plumber they determined that they are not missing a spoon. I find the Tenant's testimony to be largely self serving.

In determining this matter I have placed no weight on the male Tenant's testimony that the Landlord wrote the note from the plumber, as there is no evidence to support that speculation. I note that the writing on the note shares many similarities with the writing on the plumbing receipt, which lends credibility to the Landlord's testimony that the note was written by the plumber.

I find that the Landlord acted reasonably and responsibly when the Landlord repaired the majority of the water damage by February 13, 2014. As the Tenants likely contributed to the damage and the Landlord repaired the damage in a reasonably timely manner, I find that the Tenant is not entitled to compensation for any inconvenience associated with the blockage.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion

The Tenant has established a monetary claim of \$1,100.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced 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: July 03, 2014

Residential Tenancy Branch

