



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Success Realty & Insurance Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, RPP, FF

Introduction

This was a hearing with respect to the tenant's application for the return of her security deposit and for compensation for personal property claimed to have been discarded by the landlord. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend although served with the application and Notice of Hearing. The landlord submitted documentary evidence to the Residential Tenancy Branch in response to the tenant's application, but no one attended the hearing on behalf of the landlord.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on September 1, 1999. The tenant paid a security deposit of \$397.50 at the start of the tenancy. In a Residential Tenancy Branch decision dated December 4, 2012 the landlord was granted an order for possession of the rental unit effective December 31, 2012.

The tenant moved out of the rental unit pursuant to the Notice to End Tenancy. It was not until April 10, 2013 that she provided a handwritten note to the landlord setting out her forwarding address and returning the keys to the rental unit. The tenant also said that she was looking for some items that went missing when she moved. The items included some brackets for mounting shelving, a level, some C-clamps and some cleaning supplies. The tenant said that the items had been discarded.

According to notes supplied by the landlord, the tenant verbally agreed with the landlord that the landlord could deduct \$200.00 from the tenant's security deposit an interest to

pay for the cost of cleaning and changing locks. The landlord prepared a cheque for the tenant in the amount \$235.69, being the balance of the tenant security deposit and interest after deduction of the sum of \$200.00. The cheque was dated April 23, 2013. According to the landlord's notes voice messages were left for the tenant telling her she could pick up the cheque.

The tenant confirmed that the landlord proposed to return a portion of her damage deposit and keep some to satisfy the landlord's claim if the tenant agreed in writing. The tenant said that she attended at the landlord's office with a draft agreement, but the landlord would not pay her immediately and said that a cheque would be issued later. The tenant did not submit any documents and did not supply a copy of the draft agreement she said she prepared. The tenant said that she did not return to pick up a cheque from the landlord. She said that she waited for a further year before filing her claim because of ill health and because she was busy with other activities.

The tenant claimed for an award in the amount of her full deposit with interest, plus double the amount of the deposit and a further sum of \$130.00 for shelf brackets, clamps, a level and a square that she said were thrown away by the landlord before December 31, 2014.

Analysis

The landlord provided documentary evidence in response to the tenant's application, but failed to attend the hearing. In the absence of an appearance by the landlord I am left to make a decision based upon the evidence provided and the application of the provisions of the *Residential Tenancy Act*.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with her forwarding address in writing by delivery of her handwritten note dated April 10, 201, and based upon the written acknowledgement of the landlord in the supplied evidence, I find that the tenant served

the landlord with documents notifying the landlord of this application as required by the *Act*.

Although the tenant apparently agreed verbally to a deduction from her deposit, there was no agreement in writing as required by the *Act*. The tenant's security deposit was not refunded within 15 days of the date that the landlord received her forwarding address in writing, as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$833.19, being double the amount of her security deposit, plus accrued interest of \$38.19. With respect to the tenant's claim for compensation for her missing property, the tenant has not provided any documentary evidence to support the claim, to show the existence or value of the items, or to show that they were not left as abandoned after her tenancy ended. The tenant did not contact the landlord about the items until more than three months after the tenancy ended; this portion of her claim is dismissed without leave to reapply. Given the extraordinary delay in bringing this claim I decline to award the tenant the filing fee for her application.

Conclusion

I grant the tenant a monetary order against the landlord in the amount of \$833.19. This order may be registered in the 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: September 18, 2014

Residential Tenancy Branch

