



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was the hearing of applications by the tenant and by the landlord. The tenant applied for the return of his security deposit, including double the amount of the deposit. The landlord applied for a monetary award and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord attended together with the named persons, one of whom was present to act as an interpreter. The tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount.
Is the landlord entitled to retain the deposit or some part thereof?
Is the tenant entitled to the return of his deposit, including double the amount?

Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's house in Vancouver. The tenancy began on July 1, 2013 for a fixed term ending July 30, 2014. The monthly rent was \$830.00. The landlord collected \$800.00 as a security deposit; it was paid by the tenant on June 10, 2013. The landlord said that she took a deposit that was greater than a half month's rent and that exceeded the amount permitted under the *Residential Tenancy Act* because there would be two people staying in the rental unit, although this does not provide any basis for demanding an increased deposit. The tenancy agreement was signed by the tenant, but it also named Ms. M.R. as a tenant, although she did not sign the tenancy agreement. The tenant said that she was a friend, who stayed in the rental unit with him.

The landlord testified that in October 2013 the tenant left the rental unit to visit the Philippines to deal with a family emergency. She said that the room-mate, M.R. continued to stay in the rental unit in the tenant's absence. The landlord said that in January, 2014 the tenant had not returned and his room-mate paid the rent in full for January, but decided to move out. She said that the room-mate told her on January 25th that she was moving out and agreed that the landlord could keep the \$800.00 deposit. The landlord referred to a hand-written notation on a copy of the tenancy agreement that she submitted as evidence. She said that Ms. M.R. wrote that: "she can keep the deposit 800 for a short notice 1 week moving out". According to the landlord, Ms. M.R. also said that she was leaving the tenant's belongings in the rental unit for the landlord to clean up. The landlord said that the room-mate moved out on January 31, 2014. She testified that the tenant came to the rental property on the evening of February 1, 2014. She said that he told her that he did not have all the rent money for February and wanted to rent one room of the two bedroom unit. She testified that she told him that Ms. M.R. had given notice, moved out and agreed to forfeit the security deposit. She said that the tenant told her that he would come and pick up his belongings the next day and the landlord said that she would leave his things in the front yard for him to pick up. She said that the tenant came the following day and picked up his belongings but left behind some items including a table and chairs and a large bed that the landlord then had to dispose of. The landlord said she was unable to re-rent the unit until April and she blamed this on a "Craigslist" internet advertisement that she said the tenant posted. She said that the advertisement contained statements that were untrue and discouraged potential tenants from renting her suite.

The landlord claimed that she was entitled to a monetary award of \$2,110.00 after deducting the \$800 deposit that she retained. She said that this was for cleaning and removal of garbage, as well as the tenant's belongings and furniture, including a double bed, the replacement of a damaged fridge and loss of rent for two months. Apart from a handwritten receipt from a receipt book dated February 4, 2014, the landlord did not provide evidence of any expenditure. The receipt said that it was for: "clean up /Junk removal from Basement (address of rental unit)". The landlord said that after her new tenant complained that the fridge was smelly, she replaced the fridge in the rental unit with one of her own. She did not submit any documentary evidence concerning the replacement fridge.

The tenant testified that he went to the Philippines in October after learning that his brother has been killed there. He said that he spoke to the landlord to tell her that he would be away and he gave her a note. The landlord included a copy of the note in her documentary evidence. The note was dated October 4th and it said: "I have a credit of

400 dollars for the month of January 2014 to my landlady and I will pay when I arrive February". The note was signed by the tenant.

The tenant testified that he saw the rental unit and paid the landlord an \$800.00 deposit on June 10, 2013. He moved in on July 1, 2013 and lived in the unit with M.R, who occupied one of the two bedrooms. The tenant said that before he left for the Philippines in October he pre-paid rent up to the end of January and, as stated in his note, he told the landlord he would pay February rent when he returned. The tenant said that he arrived in Vancouver by plane from the Philippines on February 1, 2014. He went from the airport to the rental unit with his suitcases. He said that his belongings were in the rental unit, but the landlord refused to let him stay in the unit even overnight although he told her that he would pay the February rent. The tenant said that he discovered that the landlord had started renovating the rental unit including the bathroom and the kitchen, even though it was only February 1st and his belongings were still in the unit. The tenant testified that the landlord told him that she would remove his belongings and leave them outside for him to pick up the following day. The tenant managed to get help from friends and found a place to stay. He obtained help to pick up his belongings on February 2nd. They had been left in the landlord's front yard. The tenant said that the bed was not his bed; it belonged to the landlord and was in the rental unit when he moved in. The tenant testified that he could not retrieve a table and chairs from the landlord's yard because he had no place to keep them in the new place where he had arranged to stay.

The tenant said that he was treated very badly by the landlord. He went to the landlord's house several times to ask for the return of his security deposit. He did not give the landlord a written request for the security deposit and he did not give her his forwarding address in writing before he filed his application for dispute resolution on June 13, 2014. The tenant said that he did not place the Craigslist ad concerning the landlord's conduct, but he said it had likely been posted by one of his friends because they were upset about the way he had been treated by the landlord. The tenant said that he simply wanted his security deposit back because he was entitled to it.

The tenant testified that the landlord sent some documents to him before the hearing, but he said that she did not supply him with a copy of the tenancy agreement with any writing from Ms. M. R. and there was no document with handwriting by M.R. to tell the landlord that she could keep the deposit. The tenant said that he spoke to M.R. and she told him that she moved out of the rental unit before January 25th after the landlord told her that she did not think the tenant was coming back from the Philippines.

In response to the tenant's testimony, the landlord said that she performed work in the rental unit to the bathroom because there had been a leak and she had tried unsuccessfully to rent the unit on January 31st.

Analysis

The landlord confirmed in her evidence that rent was fully paid for the month of January. I find that the landlord effectively evicted the tenant without Notice on February 1, 2014 when she refused to allow him to have access to the rental unit or to stay there. Because rent was paid for January, the landlord could not consider that the tenant had abandoned his personal property, even though he may not have been at the unit for several months. She was not entitled to remove the tenant's personal belongings from the rental unit as she did on February 2nd. While there may have been a fixed term tenancy agreement, I find that it was ended, not by the tenant, but by the landlord and I find that the tenant, when faced with the landlord's refusal to permit access, accepted the events as ending the tenancy. He retrieved as much of his goods as he could in the circumstances, but he was forced to abandon a table and chairs because he had no place to store them; I accept the tenant's evidence that the bed was not his property and was in the rental unit when he moved in.

The landlord provided a receipt for \$550.00 said to be for removing the tenant's belongings from the basement. This was the only documentary evidence of expenditure. I find that the landlord is not entitled to claim any amount for the removal of the tenant's belongings. To award any sum to her for this claim would be tantamount to granting her compensation for the unlawful eviction of the tenant. I have found that the landlord unlawfully ended the tenancy; therefore there is no basis for the landlord's claim for loss of rental income. The landlord claimed that she received written authorization to keep the security deposit and referred to hand-writing on a copy of the tenancy agreement. I accept the tenant's evidence that he did not receive a copy of the landlord's document. I did not hear any evidence from Ms. M. R., who supposedly wrote the note. I am not satisfied that the note is genuine and I am also not satisfied that M.R. had the status of tenant or that she had the capacity to assign the deposit to the landlord. The note on the tenancy agreement was supposedly made on January 25, 2014, but the landlord's own documents show that she was advertising the unit for rent as early as January 24, 2014. The landlord has not proved any other loss or expense and her application for a monetary award and an order to retain the security deposit is dismissed without leave to reapply.

In his application the tenant has claimed payment of the sum of \$1,600.00, being double the amount of his security deposit. 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.

The tenant has not shown that he provided the landlord with his forwarding address in writing before filing his application for dispute resolution, I therefore find that he is not entitled to an award in the amount of double the deposit, but, I have dismissed both the landlord's claim for a monetary award and her claim to retain the security deposit. The tenant is therefore entitled to the return of his deposit and I grant him a monetary award in the full amount of the deposit.

Conclusion

I have ordered the return of the tenant's security deposit. He is entitled to recover the \$50.00 filing fee for his application for a total award of \$850.00 and I grant him a monetary order under section 67 in the said amount. 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: October 16, 2014

Residential Tenancy Branch

