



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 7, 2014. 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 in the Landlord’s absences.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double 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 loss or damage and if so how much?

Background and Evidence

This tenancy was to start on October 1, 2013 as a month to month tenancy. The Tenant did not move into the unit as the previous tenants had not moved out of the rental unit as of October 1, 2013. Rent was to be \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on or about September 15, 2013.

The Tenant said she met the Landlord at the rental unit on October 1, 2013 to move into the unit. The Tenant said the previous tenants were still in the unit and the Landlord requested a few days to get the rental unit cleared out and clean. The Tenant said she agreed to come back in two days and move in then if the unit was clear and clean. The Tenant continued to say when she came back in 2 days the rental unit was not clean and the previous tenants had left belongings and garbage in the unit. The Tenant said she did not see the previous tenants but from her point of view they were not fully moved out and the rental unit was in very poor condition.

The Tenant said she told the Landlord she would not be moving in and the Tenant requested her security deposit back. The Tenant said the Landlord said he was not going to return the security deposit as they had signed a contract. The Tenant continued to say she had signed an application to rent but no tenancy agreement was signed. On June 20, 2014 the Tenant said she wrote the Landlord again requesting her deposit back and she gave the Landlord her forwarding address in that letter.

The Tenant also provided photographs to show the previous tenants' belongings and garbage were in the unit and that the unit was not habitable on October 3, 2014, the day the Tenant returned to move in.

The Tenant said she is requesting double her security deposit to be returned in the amount of \$850.00 and to recover the filing fee of \$50.00 for this application.

Analysis

Section 16 of the Act says that the rights and obligations of both the landlord and the tenant begin the date the tenancy agreement is entered into.

I find a tenancy agreement was entered into on or about September 15, 2013 when the security deposit of \$425.00 was paid. As well the agreement was to begin on October 1, 2013.

Section 44 (e) of the Act says a tenancy can be terminated if the tenancy is frustrated.

I find that as the Landlord did not provide the rental unit in a vacant and clean condition on the date the tenancy was to start any tenancy agreement or tenancy application was frustrated and the tenancy was ended on October 1, 2014.

Further: 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 accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on June 20, 2014. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by July 5, 2014. Consequently I find for the Tenant and grant an order for double the security deposit of \$425.00 in the amount of $\$425.00 \times 2 = \850.00 .

As the Tenant was successful in this matter I also order the Tenant to recover the filing fee of \$50.00 from the Landlord. A Monetary order has been issued to the Tenant in the amount of \$900.00. The Monetary Order represents double the security deposit in the amount of \$850.00 and the filing fee of \$50.00

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 & 72 of the Act, I grant a Monetary Order for \$900.00 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: February 16, 2015

Residential Tenancy Branch

