



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing the Landlord claimed she had not been served with the Tenant's application materials. The Tenant provided in evidence proof of service by registered mail. The Landlord then claimed that she had moved out of the rental unit at the end of June 2014. She did not provide her forwarding address to the Tenant.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenant to return of double the security deposit paid?
2. Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?
3. Should the Tenant recover the fee paid to file her application?

Background and Evidence

The Tenant testified that while a written tenancy agreement did not exist, the terms of the tenancy were agreed to by emails between the parties. Those emails were introduced in evidence. The tenancy began on May 1, 2014, the Tenants paid the Landlord a security deposit of \$375.00 by electronic transfer on or about March 22, 2014.

At the outset of the hearing the Landlord alleged that the parties were merely roommates and that she was not a Landlord pursuant to the Act.

The Landlord, in accepting a security deposit and monthly rent, established a tenancy. She is not the owner of the property and as such section 4(c) of the Act does not apply. I find that a tenancy existed between the parties.

The Tenant testified that on May 28, 2014 the Landlord attempted to commit suicide by taking an overdose of alcohol and prescription drugs. The Tenant called 911 and claimed the Landlord lost consciousness in her arms.

The Tenant testified that when the Landlord was discharged from the hospital, on May 30, 2014 she gave notice to the Tenant that she wanted the Tenant to vacate the premises immediately. Tenant testified that she vacated the premises as requested and did so on May 30, 2014.

The Tenant further claimed that when she attempted to move from the rental unit, the Landlord harassed her to such an extent that the Tenant was forced to call the police again. In support she provided a copy of a police report which details an incident on May 30, 2014.

The Tenant claimed that she was traumatized by the Landlord's suicide attempt, and behaviour on May 30, 2014, to such an extent that she moved to Ontario to live with her family. She sought compensation for loss she says she incurred traveling to Ontario from the rental unit, storing her belongings and the estimated cost of their retrieval.

The Tenant testified that she made a verbal and email request of the Landlord to return her security deposit. Introduced in evidence was an email from the Tenant to the

Landlord dated June 4, 2014, wherein she requests her security deposit. Also introduced in evidence was an email dated June 16, 2014 wherein the Tenant provides her forwarding address. The Landlord responded to the June 16, 2014 email, confirming its delivery, and in which she wrote:

“Attached is a copy of section 14 “ending the tenancy” from the BC residential tenancy act. Fill your boots with regard to seeking the return of your security deposit, but so you know, I too will be pursuing the money you owe me for the one month of rent you skipped out on.”

Also introduced in evidence was a copy of a letter sent by the Tenant to the Landlord dated July 10, 2014 wherein the Tenant again provided the Landlord with a written notice of the forwarding address to return the security deposit to.

The Tenant did not sign over a portion of the security deposit.

The Tenant testified that the Landlord did not perform an incoming condition inspection report. The Tenant further testified that the Landlord also did not perform an outgoing condition inspection report.

The Tenant indicated on her Application for Dispute Resolution that she sought compensation in the amount of \$1,546.68. Also introduced in evidence was a Monetary Order Worksheet which detailed the Tenant's request for the sum of \$4,766.39 as well as receipts supporting the amounts claimed. At the hearing the Tenant confirmed that she in fact sought compensation for the sum of \$4,766.39 for the following:

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|---|-------------------|
| double the security deposit (\$375.00 x 2) | \$750.00 |
| Storage fees for her belongings to May 2015 | \$1,434.63 |
| Charges for photocopies, UPS and Canada post | \$31.76 |
| Flight to Ontario | \$400.00 |
| Flight from Ontario to Vancouver to retrieve her belongings | \$600.00 |
| Estimated cost to ship belongings | \$1,500.00 |
| Filing fee | \$50.00 |
| TOTAL | \$4,766.39 |

The Landlord disputed the Tenant's claims for monetary compensation. She testified that the Tenant left without providing proper notice, and damaged the Landlord's belongings upon vacating.

I informed the Landlord that she was not able to make a claim through the Tenant's application and that if she sought monetary compensation from the Tenant she needed to make her own application.

Near the conclusion of the hearing, I informed the Tenant that her claims for damages relating to storage fees, flights to and from Ontario and shipping costs, were not recoverable under the Act. I stated that the only claim which I would decide, was the claim for double the security deposit. At this time the Tenant disconnected from the hearing. Although the Landlord and I waited on the line for 10 minutes, the Tenant did not reconnect.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The Tenant's claim for damages relating to storage of her belongings and flights to and from Ontario are not recoverable pursuant to section 67 of the Act. Moving expenses are normal expenses when a tenancy ends and are not recoverable under section 67. Further, the Tenant's decision to move to Ontario is an expense too remote to be a compensable loss related to the tenancy. Further, even if these expenses were allowable, the Tenant failed to introduce evidence which showed that she attempted to minimize these losses as is required by section 7(2).

Expenses relating to photocopying and mailing materials in support of an application for dispute resolution are costs which are also not recoverable under the Act. Section 72 only allows for recovery of filing fees.

As indicated during the hearing, the Tenant's claim for double the security deposit, pursuant to section 38 is a valid claim.

There was no evidence to show that the Tenant agreed, in writing, that the Landlord could retain any portion of the security deposit.

I find that the Tenant, by email dated June 16, 2014, provided her forwarding address to the Landlord. While email is not the normally accepted method of providing written notification of a forwarding address pursuant to section 38(1)(b), the Landlord, in her response of that same date, acknowledged delivery. Further, the Tenant provided her address a second time by sending her a letter dated July 10, 2014. The Landlord was

obligated to return the security deposit within 15 days of June 16, 2014. The evidence establishes that she retained the security deposit.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished her right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. In any case, there was no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

In consideration of the foregoing, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel she is entitled to keep the deposit, based on unproven claims. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I note that the Landlord attempted to submit evidence about the condition of the rental unit after the Tenant left and the loss she alleges she incurred when the Tenant left without providing proper notice; however, the Landlord is unable to make a monetary claim through the Tenant's Application. The Landlord has to file their own Application to keep the deposit with the 15 days of certain events, as explained above.

The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

As the Tenant has been substantially successful, I grant her request to recover the filing fee.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$800.00**, comprised of double the security deposit (2 x \$375.00) and the \$50.00 fee for filing this Application.

Conclusion

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 09, 2015

Residential Tenancy Branch

