



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking return of the security deposit and compensation for damage or loss under the Act, regulation or tenancy agreement. The Tenants also seek to recover the cost of the filing fee from the Landlord.

The hearing process was explained and the participants were asked if they had any questions. Both parties 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.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenants mailed the Notice of Hearing documents and copies of their documentary evidence to the Landlord by registered mail sent on September 14, 2015. The Landlord did not provide any documentary evidence.

Issue to be Decided

- Are the Tenants entitled to a monetary award pursuant to the provisions of Section 38 of the Act?
- Are the Tenants entitled to compensation for loss of use of the rental unit?

Background and Evidence

The parties entered into a one year lease on January 8, 2014. On January 15, 2015, the parties entered into another one year lease. Monthly rent was \$2,500.00, due on the 1st day of every month. The Tenants also paid \$50.00 per month for parking.

The Tenant YC gave the following testimony:

The Tenant testified that he paid the Landlord a security deposit in the amount of \$2,500.00 at the beginning of the tenancy, along with \$2,500.00 for "last month's rent". The Tenant stated that he had the cancelled cheques to prove that he had paid for the last month as well as the security deposit.

The Tenant testified that the suite above the rental unit had a major flood on April 19, 2015, which forced the Tenant and his family to move out on April 24, 2015, because the rental unit was uninhabitable. The Tenant stated that the Landlord advised him that the restoration would be finished after a "brief period", and that the Landlord arranged for the Tenant's family to move temporarily into a townhouse until the repairs were complete. The Tenant stated that he paid approximately \$300.00 in moving and storage costs. He stated that the Landlord paid the Tenant's rent for the temporary accommodation out of the rent the Tenant paid the Landlord for the rental unit.

The Tenant testified that the repairs were still not completed by the beginning of June, 2015. He stated that the owners of the temporary accommodations required the Tenants to move out of the temporary accommodation by June 17, 2015. The Tenant stated that he did not wish to subject his family to a second relocation to another temporary home, followed by a third relocation when the rental unit was finally restored.

The Tenant testified that he told the Landlord he would not be moving back into the rental unit and found another place to live effective June 16, 2015.

The Tenant testified that he paid the Landlord rent for the month of May, 2015, but not for the month of June, 2015. He stated that he provided the Landlord with his forwarding address in writing on June 12, 2015. A copy of the letter was provided in evidence. The Tenant stated that he did not give the Landlord permission to retain any of his security deposit, but the Landlord has not returned any of the security deposit.

The Tenant seeks a monetary award, calculated as follows:

Return of the security deposit	\$2,500.00
Return of "last month's rent"	\$2,500.00
Return of rent paid for June 17 to 30 (\$85.00 per day)	\$1,190.00
Loss of quiet enjoyment (2 months' rent)	<u>\$5,000.00</u>
TOTAL	\$8,990.00 (sic)

The Landlord gave the following testimony:

The Landlord denied that the Tenants paid last month's rent in advance, but acknowledged that he was holding the Tenants' security deposit in the amount of \$2,500.00.

The Landlord stated the rental unit was furnished and that the Tenants caused damage to the furniture and a glass shower door. The Landlord agreed that he did not have the Tenants' permission to deduct anything from the security deposit. He stated he received the Tenants' forwarding address in "mid-June".

The Landlord agreed that the flood from the upstairs suite was "serious" and that there was "water pouring everywhere". He stated that he found alternative accommodation for the Tenants and that the renovations were supposed to take "1 to 1 ½ months". He testified that when he discovered that they would be complete by July 1, 2015, he told the Tenants. The Landlord stated that the Tenant YC told him that he didn't wish to move back in. The Landlord acknowledged that the Tenants' temporary accommodation "expired on June 17, 2015".

The Landlord submitted that he should "not be liable for more than \$3,640.00".

Analysis

This Hearing was convened to consider the Tenants' Application for Dispute Resolution. The Landlord has not filed an Application, and therefore I make no findings with respect to any possible claim that the Landlord may have against the Tenants. The Landlord retains the right to file an application for damages under Section 67 of the Act, if he so desires.

The parties did not agree whether the Tenants had paid for "last month's rent" in advance. The Tenant YC stated that he had proof that such a payment had been made. I ordered the Tenant YC to provide me, and the Landlord, with such proof of payment within 3 days of the date of the Hearing. The Tenant provided copies of three cheques, along with proof that they had been negotiated, as follows:

Cheque #	Date of Cheque	Amount of Cheque	Date negotiated
013	January 9, 2014	\$2,500.00	January 13, 2014
014	January 31, 2014	\$2,600.00	January 31, 2014
060	January 31, 2014	\$2,500.00	February 2, 2014

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep the security deposit.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I find that the Landlord did not file an application for dispute resolution against the security deposit, or return the full amount of the security deposit within 15 days of receipt of the Tenants' forwarding address in writing.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the security deposit, in the amount of **\$5,000.00**.

I find that the Landlord accepted payment for "last month's rent", contrary to the provisions of the Act. The Tenant did not pay rent for the period between June 1 and Jun 17, 2015, and therefore I find that the Tenant is entitled to compensation from the Landlord, calculated as follows:

"Last month's rent"	\$2,500.00
Less rent Landlord paid on Tenant's behalf	
for June 1 to June 17, 2015 ($\$2,500.00 \times 17/30$)	<u>-\$1,416.67</u>
TOTAL	\$1,083.33

I find that the flood was not the fault of either party and that it led to the inability of the parties to abide by the terms of the tenancy agreement. I find that the tenancy agreement was frustrated. Residential Tenancy Policy Guideline 34 provides the following, in part:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the

contract are discharged or relieved from fulfilling their obligations under the contract.

Therefore, the remainder of the Tenants' claim for compensation is dismissed.

The Tenants' Application had merit and I find that they are entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$6,183.33** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 04, 2016

Residential Tenancy Branch

