



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, FF

Preliminary Issues

After a brief review of the tenant's application it was determined that the first name on the application is the name the landlord is known as and not the landlord's legal name. The parties did not raise any objections to the landlord's legal name being included. Accordingly, the style of cause for the tenant's Application for Dispute Resolution has been amended to include the landlord's legal first name, pursuant to section 64(3)(c) of the *Residential Tenancy Act*, (herein after referred to as the *Act*).

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security and pet deposit; and to recover the filing fee from the landlords for the cost of this application.

The tenant had omitted to check the box claiming a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; however, as the details of the dispute section of the tenant's application clearly indicates the tenant's application for this matter; I find the landlords would be sufficiently aware of the tenant's claim and I will allow this amendment to the tenant's application pursuant to s. 64(3)(c) of the *Act*.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlords confirmed receipt of evidence. I have reviewed all oral and written

evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2013 and ended on September 30, 2014. Rent for this unit was \$850.00 per month including all utilities and basic cable service. Rent was due on the first of each month. The tenant paid a security deposit of \$425.00 and a pet deposit of \$100.00 on March 07, 2013. The tenant provided a forwarding address in writing to the landlords on September 30, 2014. The parties also agree that there was no inspection reports completed at the start and end of the tenancy.

The tenant testified that she had given notice to end the tenancy for September 30, 2014 and moved out on that day. The landlords have not returned the tenant's security and pet deposit and the tenant did not give the landlords written permission to keep all or part of her security or pet deposit. The tenant testified that she continued to contact the landlords about the return of her security and pet deposit and had to gather some additional information concerning her Shaw cable box so this delayed the filing of this application. The tenant testified that as the landlords have retained her security and pet deposit the tenant seeks to recover double the deposits to the amount of \$1,050.00.

The tenant testified that when she moved into her unit cable was supposed to have been included. Shaw offered an in-suite deal for all the suites as Shaw wanted all suites to have their own cable and phone. The tenant had made an appointment with Shaw to come and hook the cable up in her suite but later changed her mind and cancelled the appointment. The landlords let Shaw into the tenant's suite when she was not at home and Shaw hooked up the cable to the suite. The tenant testified that another tenant living in the building was also having their cable

hooked up that day and they told Shaw that this tenant had cancelled her appointment; however, because the landlords let the technician into her suite the tenant was left having to pay for the cable service at \$25.00 per month for 15 months. The tenant agreed that she did not contact Shaw and inform them that they had made a mistake in hooking her suite up to cable as she had cancelled the appointment. The tenant seeks to recover \$375.00 for the 15 months of cable service from the landlords.

The tenant testified that she owned her own cable box and the landlord had to put the tenant's box into his own name in order to get the in-suite deal. The tenant thought that the cable box in her suite was her own box. At the end of the tenancy she removed this box but later found that the box she had belonged to the landlords. The tenant returned the box to the landlord but the landlord did not return the tenant's box to her. The tenant testified that she later checked with Shaw and was informed that the box with the tenant's serial number had been activated at the landlord's address. Shaw then deactivated that box and to the tenant's knowledge the box has not been reactivated. As the tenant's cable box has not been returned to her the tenant seeks to recover the cost for the box as shown on her original invoice of \$178.00.

The tenant testified that at the start of the tenancy the tenant and her son were both named on the tenancy agreement. Her son later moved out but remained on the tenancy agreement. When her son moved back into the unit the landlord had a problem with this and said the tenant's son could only stay for two weeks. The tenant testified that a landlord is not allowed to alter a tenancy agreement and so the tenant asked the landlord to give them notice to end their tenancy. The landlord refused to do so, so the tenant gave one month's notice and vacated the unit on September 30, 2014. The tenant testified that she incurred moving costs of \$259.88 and seeks to recover these costs from the landlords.

The landlords disputed the tenant's claim. The landlord BD provided testimony during the hearing and testified that he did receive the tenant's forwarding address but as the tenant did not return the landlords' cable box for three months the landlords retained the tenant's security and pet deposit.

The landlords disputed the tenant's claim for \$375.00. The landlord testified that the tenant had requested that the landlords let the Shaw technician into the suite to connect her cable. The tenant did not inform the landlords that she had cancelled the appointment and so the technician connected the tenant's cable in her suite. The tenant did not cancel this connection with Shaw and cannot now hold the landlords responsible for her cable usage.

The landlords disputed the tenant's claim for \$178.00 for the cost of her cable box. The landlord testified that he has three cable boxes in his house and they are all in the landlords' name and are all still active. The tenant's cable box was in her ex-husbands name and it was returned to the tenant a few months after she moved into the suite. The tenant had this box in her possession while she lived in the suite. A box cannot be activated if it is in someone else's name.

The landlords disputed the tenant's claim for moving costs of \$259.88. The landlord testified that it was the tenant's choice to move from the suite. The tenant and her son were in constant arguments and her son and his girlfriend were both living in the suite and paying rent to the tenant. Although the tenant's son was named on the tenancy agreement at the start of the tenancy he did not sign the agreement and the tenant said he was not going to be living there. The tenant testified that when her son was put on the agreement he was not in town and could not sign the agreement. The landlord never came and asked her son to sign it and no copy of the agreement was ever provided to the tenants. The tenant testified that her son's girlfriend did not live in the unit and had her own place.

The tenant disputed that the landlord returned her cable box when she was living in the suite. The tenant testified that when she gave her cable box to the landlord he informed her it was in her ex-husband's name. The tenant testified that she sorted this out with Shaw and had the cable box put into the landlord's name so he could activate it to get the in-suite deal. The tenant gave her permission verbally to Shaw for this to happen. Now the tenant's cable box with her serial number is in the landlord's name.

The tenant agreed that she did not tell the landlords that she had cancelled the appointment with Shaw.

The landlord testified that none of the cable boxes in his possession have the tenant's serial number. Without written permission from the tenant the landlord would not be able to activate the tenant's cable box. The landlord is willing to allow the tenant access to see the serial numbers on his cable boxes.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover double the security and pet deposit; s. 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Sections 23(1) of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. S. 23(4) of the *Act* states that the landlord must complete a condition inspection report in accordance with the regulations. In failing to complete the condition inspection report when the tenant moved in, I find the landlord contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(c) of the *Act* says that the landlord's right to claim against the security and pet deposit for damages is extinguished.

When a landlord's right to claim against the security and pet deposit has been extinguished the landlord must return the security and pet deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenant's forwarding address in writing on September 30, 2014 and that the tenancy ended on that day. As a result, the landlords had until October 15, 2014 to return all of the tenant's security and pet deposit. As the landlords failed to do so, the tenant has established a claim for the return of double the security and pet deposit to an amount of **\$1,050.00**, pursuant to section

38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the tenant's claim to recover \$375.00 for the cable usage for the 15 months of the tenancy; the tenant agreed she had not informed the landlord that she had cancelled the appointment with Shaw for them to come and install cable in the tenant's suite. Furthermore, the tenant did not cancel the cable service with Shaw after they had fitted it to her suite and the tenant continued to use this service for a further 15 months. I find then that as it was the tenant's choice to continue with her cable service that the tenant cannot hold the landlords responsible for any charged incurred. This section of the tenant's application is dismissed without leave to reapply.

With regard to the tenant's claim for \$178.00 for the cost of her cable box; in this matter the tenant has the burden of proof to show that the landlords did not return her cable box and continued to use it. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this matter the landlord testified that he returned the tenant's cable box to her within a few months of the start of the tenancy. Without further corroborating evidence from the tenant to show this box was not returned or was used by the landlord then I must find that the tenant has failed to meet the burden of proof and consequently this section of the tenant's application is dismissed without leave to reapply.

With regard to the tenant's claim for moving costs; there is no provision under the *Act* for me to award moving costs to the tenant when the tenant has given notice to end the tenancy and there is insufficient evidence from the tenant to show that she gave notice because of a material breach of the tenancy agreement by the landlords. Therefore, I must conclude from the evidence before me that it was the tenant's choice to vacate the rental suite and consequently this section of the tenant's application is dismissed without leave to reapply.

As the tenant's claim has some merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlords pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,100.00**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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 31, 2016

Residential Tenancy Branch

