



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC OLC RPP FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 28, 2015. The Tenant filed seeking orders for: money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; for the return of double their security deposit; the Landlord to comply with the *Act*, Regulation, or tenancy agreement; for the return of the Tenant's personal possessions; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlords, the Tenant, and the Tenant's Witness. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

On November 2, 2015 the Tenant submitted 13 pages of evidence to the Residential Tenancy Branch (RTB). The Tenant affirmed that he served the Landlord with copies of the same documents that he had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's submission as evidence for these proceedings.

No evidence was received at the RTB from the Landlords. The Landlords stated they submitted evidence in support of their own application and not in response to the Tenant's application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to the return of double the security deposit?
2. Do the Landlords have the Tenant's possession(s)?
3. Should the Tenant be compensated for losses which resulted from stress, borrowing money, and expenses resulting from filing for dispute resolution?

4. Should the Landlords be ordered to comply with the Act, Regulation, and/or tenancy agreement?

Background and Evidence

On July 31, 2015 the current Landlords purchased the single detached home from the applicant Tenant. The home was described as being a 3 level home with two separate self-contained basement suites; a 2 bedroom suite and a 3 bedroom suite.

The parties agreed upon a quick two week closing date to finalize the sale. Through negotiations with their realtors the parties entered into a verbal agreement whereby the Tenant would be allowed to occupy a room in the 3 bedroom basement suite for free, for the month of August 2015, to allow him time to remove all of his possessions and to find another home.

At the time the title changed into the new owners' names each basement suite was occupied. The Landlords and Tenant agreed that the Landlords would deal only with the Tenant. The Tenant was required to deal directly with the other occupants collecting their rent and security deposits to pay to the Landlords. The agreement for August 2015 was the Tenant was to pay the Landlord's \$1,400.00 which consisted of \$850.00 for the master bedroom plus \$550.00 for the den. No payment was required for the room that the Tenant was to occupy for the month of August 2015.

The Tenant testified that on August 2 or 3, 2015 he paid the Landlords \$1,400.00 for the other occupant's August rent plus \$650.00 as their security deposits. The Tenant stated that in mid-August he entered into another verbal agreement with the Landlords allowing him to stay in the rental unit for the month of September at a cost of \$400.00.

The Tenant submitted that on September 1, 2015 he paid the Landlords \$1,800.00 (\$850.00 + \$550.00 + \$400.00) for the rent for the 3 bedroom suite. He stated that all occupants, including him, were moved out of the 3 bedroom suite by September 30, 2015. He submitted that he served the Landlords with his forwarding address during the first week of October 2015.

The Tenant asserted that he is seeking payment for the return of double his \$650.00 security deposit, \$100.00 for his administrative time and stress in bringing this application forward, \$240.00 for the day he missed from work, plus the \$50.00 filing fee. He stated that he is also seeking the return of a large shelf that was left in the front hallway of the main level of the house.

The Tenant testified that on September 30, 2015 he personally paid the occupant's their security deposits as they dealt only with him. He argued that the Landlords never dealt with the other occupants and therefore they should be required to return the security deposit directly to him.

The Witness testified that she was present on August 2nd or 3rd, 2015 and assisted her brother in counting the two piles of money that he later gave to the Landlords. She stated that she recalled that the one pile of money was \$650.00 and was for the security deposit and the second pile was for rent but she could not recall exactly how much that totalled. She confirmed that she did not witness her brother giving the money to the Landlords as he went upstairs while she remained in the rental unit.

The Witness submitted that she was also present at the rental unit at the end of the tenancy. She stated that she helped with the cleaning and was told that the owners were supposed to come to the unit between 12 and 1:00 p.m. to conduct the move out. She submitted that she stayed until 3:30 p.m. and the owners had not attended.

The Witness stated that she saw her brother, the Tenant; give the security deposit money to three people. She did not know their names and described them as being a person by the name starting with "M", a person of East Indian descent, and a couple with an accent.

The Landlords testified that they had entered verbal agreements with the Tenant which allowed him to stay for free in the 3 bedroom suite for August 2015 and to stay for September 2015 with the payment of \$400.00 rent. They stated that his room was to be rented for \$400.00.

The Landlords submitted that they were not given any paperwork regarding the tenancies and argued that they were told there were no written agreements. They confirmed that they primarily dealt with the Tenant and no other occupants. The Landlords stated that they could not say for certain who all of the occupants were that were staying in the 3 bedroom suite or when some of the occupants had actually moved out. They were not aware that some of the people had moved out and were replaced with other occupants.

The Landlords acknowledged receipt of the \$1,400.00 rent payment and the \$650.00 security deposit payment that was delivered to them by the Tenant sometime in the first week of August 2015. They asserted that the Tenant also gave them a piece of paper that had the two occupant's names and the deposits they paid of \$425.00 and \$225.00.

The Landlords stated that the security deposits were never defined in the sale agreement. They stated that they were told there were no agreements in writing. The Tenant had informed them that "he" had tenants that he would continue to look after.

The Landlords Testified that when the occupant "M" was moving out they asked him if he had his security deposit returned and he said no. They stated that "M" wrote down his email address for them and on October 10, 2015 they sent "M" \$225.00 by email transfer as the return of his security deposit.

The Landlords questioned why the Tenant would get "M's" security deposit back when they had a piece of paper written by the Tenant which outlined that "M" had paid the \$225.00 security deposit. They confirmed that they are still holding the \$425.00 deposit in trust and argued that they were waiting for the Tenants who paid that deposit to contact them.

The Landlords testified that they assisted the Tenant in cleaning up the rental unit until 11:30 p.m. on September 30, 2015. The Tenant had left some possessions at the rental unit and to their knowledge everything he had wanted had been picked up since then. They confirmed receipt of the Tenant's forwarding address and stated it was posted to their door sometime around October 1, 2015.

The Landlords argued that they were never told, prior to this hearing, that the Tenant wanted the shelf from the front hall of their entrance way. The Landlords described the shelf as being massive, floor to ceiling about 10 feet by 5 feet, and is located behind their entrance door. They were not sure if it was attached to the wall.

In closing, the Tenant surmised that he was the only Tenant to deal with the Landlords so he was the only one who should have been paid the refund of the security deposit as he managed the other occupants directly. He said that if he entered into an agreement with "M" about money "M" had previously owed him then that was his business and not the Landlords.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find the Landlords and applicant Tenant entered into a verbal month to month tenancy agreement that began August 1, 2015. I further find that the terms of that verbal tenancy agreement, as listed above, are recognized and enforceable under the *Residential Tenancy Act*.

An occupant is defined in the *Residential Tenancy Policy Guideline* 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy

agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a written tenancy agreement to include the new occupant as a tenant.

After consideration of the submissions by both parties, I find the Landlords entered into a verbal tenancy agreement with the Tenant which required the Tenant to pay \$1,400.00 rent for August 2015 plus \$1,800.00 rent for September 2015; regardless of who else resided in the rental unit. I accept the Tenant's submission that the parties agreed that he would manage the other occupants and that he would be the only person who would deal with the Landlords.

Based on the above, I find that the applicant Tenant was the only person who had entered into a verbal tenancy agreement with the Landlords. I find that all other persons who occupied the 3 bedroom suite were occupants as defined by Policy Guideline 13. Accordingly, those occupants had no tenancy relationship with the Landlords.

I further find that, notwithstanding the paper the Tenant submitted to the Landlords when he paid the ~~\$625.00~~ **\$650.00** security deposit, the security deposit was paid by the Tenant and remained in trust with the Landlords to be disbursed in accordance with section 38 of the *Act* as described below.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The tenancy ended September 30, 2015, as noted above, and I accept that the Landlords received the Tenant's forwarding address on October 1, 2015. Therefore, the Landlords were required to return the security deposit of ~~\$625.00~~ **\$650.00** in full to the Tenant or file for dispute resolution to retain the deposit no later than October 16, 2015. The Landlords did neither. Rather, the Landlords filed an application for compensation and other reasons, not to retain the security deposit, on December 31, 2015.

I find that the Landlords failed to comply with Section 38(1) of the *Act* and the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above, I find that the Tenant has succeeded in proving the merits of their claim for the return of double his security deposit. Accordingly, I award him double the security deposit plus interest in the amount of ~~\$1,250.00~~ (2 x ~~\$625.00~~) **\$1,300.00** (2 x **\$650.00** + \$0.00 interest), pursuant to sections 38 and 67 of the *Act*.

Regarding the Tenant's request for \$100.00 for his administrative time and stress in bringing this application forward and \$240.00 for the day he missed from work I find that the Tenant has chosen to incur these costs which cannot be assumed by the Landlords. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. Costs incurred due to administrative time; stress; a choice to borrow money; or to take time off of work are not breaches of the *Act*, they are choices and/or punitive damages. Therefore, I find that the Tenant may not claim those losses as they are not denominated, or named, by the *Residential Tenancy Act*.

Regarding the Tenant's request for the return of a large shelf or cabinet that was left inside the Landlords' residence after the completion of the sale of the property, I conclude that issue relates to the sale of the property and not to the tenancy agreement. Therefore, I decline to rule on the Tenant's request for the return of the shelf or cabinet for want of jurisdiction. The Tenant is at liberty to seek a remedy through the court of competent jurisdiction.

The Landlords have been ordered to return double the Tenants' security deposit and as landlords in B.C. they are required to comply with the *Act* and Regulations. Therefore, there is no need to issue a subsequent order for the Landlords' to comply with the Regulation and/or tenancy agreement as this tenancy has ended.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant was partially successful with his application and was awarded the return of double his security deposit plus his filing fee for the total amount of ~~\$1,300.00~~ (~~\$1,250.00~~ **\$1,350.00** (**\$1,300.00** + \$50.00)). The Tenant has been issued a Monetary Order for ~~\$756.04~~ **\$1,350.00** which must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

I declined to make a ruling on the Tenant's request for the return of his personal property for want of jurisdiction.

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 20, 2016

Residential Tenancy Branch

