



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNR, MNSD, MNDC, FF

Tenant's application: MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied for a monetary award for the return of her security deposit, including double the amount. The landlord applied for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing. I heard evidence from the tenant's witness, also an occupant of the rental unit

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit, including double the amount?

Is the landlord entitled to a monetary order and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is a house in Vancouver. The tenancy began in 2014 for a fixed term and thereafter on a month to month basis. Monthly rent in the amount of \$2,500.00 was payable on the first of each month. The tenant paid a security deposit of \$1,250.00 when the tenancy began.

There was a previous dispute resolution proceeding with respect to this tenancy. In a decision dated December 21, 2015 an arbitrator granted the landlord an order of possession pursuant to a one month Notice to End Tenancy for cause. The order required the tenants to move out of the rental unit on January 15, 2016. The landlord

was awarded the \$50.00 filing fee for her application, to be retained from the security deposit.

The tenant filed an application for dispute resolution on February 29, 2016. She claimed payment of her security deposit. On March 2, 2016 the tenant filed an amendment to her application to claim the return of double her security deposit in the amount of \$2,400.00 and recovery of the filing fee for her application. The tenant submitted Canada Post receipts as proof that she served the landlord with her application and amendment, but she did not submit any other documents.

The landlord applied on September 15, 2016 to claim a monetary award in the amount of \$1,588.20. She said in her submissions that she was away on January 15, 2016 when the tenant and her boyfriend were required to move out of the rental unit. She gave her friend, J.F. a power of attorney to act on her behalf and to ensure the tenants moved as required by the order. The landlord said that the tenants moved without cleaning the house. They left belongings behind and the house was filthy and smelly. The landlord said the house was also infested with bedbugs. She submitted pictures showing the condition of the house at the end of the tenancy. The pictures showed cast off belongings, numerous bags of garbage, food left behind and a significant amount of dirt, debris and necessary cleaning to be done. In a written statement the landlord's attorney said that the tenants refused to participate in a move out inspection of the rental unit. The tenants continued to move their belongings out of the house until the evening of January 15th and the tenant returned again to after 8:45 P.M. to obtain jewellery that she left in the rental unit. The landlord's agent let her in to get the jewellery. J.F. said in her statement that the tenant said she could not perform more cleaning within the next 48 hours; she wanted more time, but the landlord's agent said that the rental unit had to be readied for new tenants and there was not more time. J.F. told the tenant that she might not get her deposit back. She said that the tenant did not provide a forwarding address.

The landlord said that she did not receive the tenant's forwarding address until she was served with the tenant's application for dispute resolution.

The landlord said that the tenant's cheque was returned and the tenants did not pay rent for the period from January 1st to the 15th. In her monetary order worksheet the landlord claimed the following:

- Commercial cleaning charges: \$787.50
- Pest control charges: \$472.50

• Junk removal fees:	\$278.20
• Rent for Jan 1 to Jan 15:	\$1,250.00
Total:	\$2,788.20

The tenant's husband testified at the hearing. He said the landlord's agent was hostile and abusive towards them. She interfered with their efforts to move their belongings and clean the rental unit. He said that she denied them access and her interference prevented them from removing all their belongings and performing cleaning. He said that the landlord's agent effectively evicted them; she insisted that they had to be out because the landlord had an order of possession, even though the landlord had not followed the proper steps to enforce the order.

Analysis

The landlord was granted an order of possession in a previous dispute resolution proceeding. According to the tenant's evidence the landlord's agent interfered with their move-out process by essentially acting to evict the tenants before they had finished their move and by preventing them from performing cleanup work that they would have done had they not been denied access to the rental unit.

I find that there is some merit to the tenant's submissions that the landlord's agent prevented them from removing all their belongings and castoffs and garbage from the rental unit, denying access to the rental unit.

The landlord claimed amounts for pest control treatments, but I was not provided with sufficient evidence to establish that there was a pest problem or that it was caused by the tenants. I note as well that the landlord did not provide a copy of a move-in condition inspection report to establish the condition of the rental unit at the beginning of the tenancy.

It is not disputed that the tenant failed to pay rent for the period from January 1, 2016 to January 15, 2016. I find that the landlord is entitled to a monetary award for unpaid rent for January in the amount of \$1,250.00, but I deny the claims for commercial cleaning charges, for pest control charges and for junk removal fees.

The tenant applied for the return of double her security deposit.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the

landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant did not submit proof that the landlord was provided with the tenant's forwarding address in writing before she commenced her application to claim the deposit and I therefore dismiss her claim for the return of her security deposit, including the claim for payment of double the amount. The security deposit will be applied in partial satisfaction of the landlord's claim. The landlord has been awarded the sum of \$1,250.00, the other claims were dismissed. The landlord is entitled to recover the \$100.00 filing fee for her application, for a total award of \$1,350.00. I order that the landlord retain the remaining security deposit of \$1,200.00 in partial satisfaction of the award and I grant the landlord an order under section 67 for the balance of \$150.00. This order may be registered in the Small Claims Court and enforced as an order of that court

Conclusion

The tenant's application has been dismissed; the landlord's application has been allowed in part. The landlord has been granted a monetary order in the amount of \$150.00.

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: November 18, 2016

Residential Tenancy Branch