



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This was a hearing with respect to the tenant's application for the return of her security deposit, including double the amount and for other relief. The hearing was originally scheduled to be heard on November 8, 2016, but it was adjourned and rescheduled to be heard on January 5, 2017 at the request of the landlord. The hearing on January 5th was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The tenant's intended witnesses called in at the commencement of the hearing, but they were excluded from the hearing and their written statements were referred to during the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?
Is the tenant entitled to a refund of rent paid?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Burnaby. The tenancy began September 20, 2015 for a one year term ending September 30, 2016. The agreement provided that the tenancy could continue on a month to month basis after the expiry of the term. The monthly rent was \$450.00 and the tenant paid a security deposit of \$225.00 at the start of the tenancy.

The tenant moved out of the rental unit without notice on March 17, 2016. The tenant testified that her move was triggered by the landlord's repeated violations of her rights to privacy and quiet enjoyment. The tenant testified that the landlord has allowed unauthorized person to enter into her rental unit without any form of notice. The tenant referred to several incidents in February and March. The tenant said that on March 13th at 9:30 P.M. the landlord allowed several men to enter the basement to inspect a vacant

room. One of the men opened the tenant's bedroom door without knocking while she was partially clothed. The tenant sent a text message to the landlord to complain about the incident. She said that the landlord's husband responded and said to her that: "This is my house and I don't need your permission to enter and stated to her that she could move out whenever she wanted. The tenant said there were further incidents and confrontations on March 14th and the following day she texted the landlord to say she was moving out.

The tenant moved out on March 17th. She gave the landlord a letter wherein she said that the landlord had breached her lease and she was moving out immediately for her own safety. She asked for the return of her security deposit and requested the return of rent for the balance of the month of March in the amount of \$203.23.

The tenant submitted a copy letter dated April 5, 2016 sent to the landlord. The letter provided the tenant's forwarding address and requested the return of her security deposit as well as return of rent paid for March in the amount of \$203.23.

The landlord denied that she has interfered with the tenant's privacy or quiet enjoyment. She said there are two rental units in the basement of her house. The occupant of the other room moved out when her lease expired. She said the tenant allowed an unknown person to stay in her unit when the tenant was not present without any notice. The landlord said her parents entered the unit for a security inspection. She said that the landlord performed some necessary construction and repairs in the downstairs portion of the house, but she said the work was in a public area and the tenant was notified of the work. The landlord said that the tenant's room was entered by accident when the person who was inspecting the room for rent opened the tenant's door by mistake.

The landlord also said that the tenant complained when her husband did work in the basement even though the work was in the so called public area of the basement shared between the two rooms in the basement. The landlord acknowledged that the landlord turned off lights and heat in the public area when the tenant left them on when she was not home. She also acknowledged that her husband made repairs to the tenant's bathroom when the tenant was away

The landlord said that after the tenant informed her that she was moving out immediately the landlord offered to refund her security deposit, but not the remaining rent for March. The landlord did not return the security deposit because nothing was settled and the tenant did not agree to accept the security deposit, but not the rent refund.

Analysis

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.

I am satisfied that the tenant provided the landlord with her forwarding address in writing by letter dated April 5, 2016, and based upon the acknowledgement of the landlord at the hearing I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$450.00, being double the deposit amount. With respect to the tenant's claim for refund of rent for March, the tenant's position is that she was entitled to move without notice because of the landlord's continued actions entering her rental unit without permission and without notice. She claimed to be entitled to move without notifying the landlord that she was in breach of her obligations under the lease and without giving her an opportunity to correct the breach because she felt unsafe and insecure living in the rental unit.

I accept the tenant's evidence that the landlord did breach the tenant's rights by entering the rental unit without permission and I accept that the landlord and her husband apparently failed to accept that the tenant had the **exclusive** right to possession of the rental unit free from disturbance by the landlord. I find that the landlord was in breach of her obligations under the tenancy agreement and the *Residential Tenancy Act* by entering the unit without permission and without notice, but I consider that the breach that occurred was not so serious that it justified the tenant in ending the tenancy without notice. The tenant had the option of notifying the landlord in writing that she was in breach of the tenancy agreement and that the tenant would end the tenancy if there was a further violation. She also could have applied to the Residential Tenancy Branch for an order that the landlord comply with the *Act*,

Regulation and tenancy agreement. Because the tenant did not take either of these steps before moving I decline to award her the balance of rent for March and the claim for a rent refund is dismissed.

The tenant did not pay a filing fee for her application and I grant the tenant a monetary order against the landlord in the amount of \$450.00, being double the amount of her security deposit. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant's claim has been allowed in the amount stated.

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: February 06, 2017

Residential Tenancy Branch