



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the Act; the tenant provided oral testimony that the landlord was served by registered mail on September 29, 2016. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the Act.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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 tenant testified that this month to month tenancy started on July 01, 2013. Rent for this unit was \$1,600.00 per month due on the 1st of each month. The tenancy was ended by way of an Order of Possession on September 06, 2016. The tenant paid a security deposit of \$800.00 at the start of the tenancy. A copy of the tenancy agreement was not provided in documentary evidence.

The tenant testified that she gave the landlord her forwarding address in writing on September 07, 2016 by posting it to the landlord's door. The tenant then realised she had not dated that letter so she provided her forwarding address again in writing by posting it to the landlord's door on September 08, 2016. The tenant has provided photographic evidence showing this letter posted to the landlord's door.

The tenant testified that she has not given the landlord permission to keep all or part of the security deposit and the landlord therefore had 15 days to return the deposit in full to the tenant and has failed to do so. Due to this the tenant seeks to recover double the security deposit to an amount of \$1,600.00.

The tenant testified that at the end of the tenancy the landlord, his wife and their children were at the rental unit. The tenant had removed her belongings from the house and was donating dishes and dog items to charity. There was other items left there and the tenant informed the landlord that she would come back later with her brother to remove these other items. The landlord said this was alright. The tenant returned one and half hours later and the landlord had removed all of the tenant's belongings.

The tenant has provided a list of possession she alleges the landlord removed on her monetary order work sheet; these include dog show awards, Christmas ornaments and a Christmas tree, Italian rattan chairs, a mahogany table, a wood table, a lawn mower, a hose and reel, a hose, and an animated Santa. The tenant seeks to recover the value of these belongings to an amount of \$1,070.00.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any oral evidence from the landlord, I have carefully considered the tenants undisputed evidence before me.

With regard to the tenant's application to recover double the security 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 tenants' forwarding address in writing to either return the security deposit to the tenants 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 tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on September 06, 2016 and the landlord received the tenant's forwarding address in writing on September 11, 2016 as it is deemed to have been received three days after it was posted to the landlord's door pursuant to s. 90 (c) of the *Act*. I. As a result, the landlord had 15 days from this date, until September 26, 2016, to return the tenant's security deposit or file an application to keep it. I find the landlord did not return the security deposit and I have nothing before me to show the landlord has filed an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$1,600.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenant's application for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenant has provided a list of personal items; however, the tenant has provided insufficient evidence to show that these belongings were left at the rental unit or that they were removed illegally by the landlord. When a tenancy ends a tenant is required to remove all personal items from the rental unit and property and any items left may be considered abandoned by the landlord and dealt with under part five of the Residential Tenancy Regulation.

As the tenant has the burden of proof to meet the test shown above I find the tenant has not met this burden of proof to show that the items exist, that they were removed by the landlord, or the value of the goods to show the actual amount required to compensate the tenant for the loss. Accordingly this section of the tenant's application is dismissed without leave to reapply.

As the tenant's application has some merit, I find the tenant is entitled to recover the filing fee of **\$100.00** 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 **\$1,700.00** pursuant to s. 38(6)(b) and 72(1) of the *Act*. The Order must be served on the landlord. Should the landlord 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: March 29, 2017

Residential Tenancy Branch