



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated April 18, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit.

The Tenant was represented at the hearing by E.R., a legal advocate and agent. The Landlords were represented at the hearing by P.B. Also in attendance for the Landlord was G.P., who did not participate in the hearing. All parties giving testimony provided a solemn affirmation.

On behalf of the Tenant, E.R. testified that the Application package was served on the Landlords by registered mail on April 21, 2017. On behalf of the Landlords, P.B. acknowledged receipt on April 25, 2017. The Tenant also served a further documentary evidence package on the Landlord by registered mail on August 18, 2017. On behalf of the Landlords, P.B. acknowledged receipt on August 22, 2017.

No issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties agreed the tenancy began on April 1, 2010, and ended on April 13, 2016, when the Tenant was removed by a bailiff. At the end of the tenancy, rent in the amount of \$770.00 per month was due on the first day of each month. Further, the parties agreed the Tenant paid a security deposit of \$350.00 and a pet damage deposit of \$350.00, which the Landlords hold.

The Tenant's monetary claim was set out concisely on the Application. First, the Tenant claimed \$1,400.00, or double the amount of the security and pet damage deposits held by the Landlord. E.R. testified the Tenant provided the Landlord with her forwarding address in writing on May 6, 2016, and February 16, 2017.

In reply, P.B. acknowledged receipt of the Tenant's forwarding address and conceded the deposits have not been returned to the Tenant. However, he testified that the strata incurred considerable expense in evicting the Tenant and cleaning costs.

Second, the Tenant claimed \$439.11 as pro-rated rent from April 14-31, 2016, the period of time she did not occupy the rental unit after being removed by the bailiff.

In reply, P.B. testified that he knew the bailiff would be attending on April 13, 2016, but that the rental unit was not in a condition to be re-rented as it required cleaning. He testified the unit was not re-rented until August 1, 2016.

Finally, the Tenant claimed \$2,450.00 to replace dentures that fell into a bathroom air vent during the tenancy.

In reply, P.B. testified that the Landlord does not have the dentures, and does not know where they are.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With regard to the Tenant's claim for return of double the amount of the security deposit, section 38 of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, E.R. testified, and I find that the Landlords received the Tenant's forwarding address in writing on March 6, 2017, at the latest. However, the Landlords did not return the security and pet damage deposits to the Tenant, or make a claim against them by filing an application for dispute resolution. Accordingly, I find the Tenant is entitled to receive double the amount of the security deposit, or \$1,400.00, pursuant to section 38(6) of the *Act*.

With regard to the Tenant's claim for \$439.11 for pro-rated rent for April 2016, I find there is insufficient evidence before me to conclude the Tenant is entitled to recover this amount from the Landlord. According to P.B., the Tenant had been over holding after receiving a notice to end tenancy but failing to dispute it. Further, the Tenant, who was removed from the rental unit by a bailiff, did not clean the unit and it could not be re-rented until August 1, 2016. This aspect of the Tenant's Application is dismissed.

Finally, with regard to the Tenant's claim for \$2,450.00 for lost dentures, I find there is insufficient evidence before me to conclude the Landlord is responsible for this cost. In fact, P.B. was adamant that the Landlord is not in possession of the Tenant's dentures.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,400.00, which is double the amount of the security and pet damage deposits, in accordance with section 38(6) of the *Act*.

Conclusion

I grant the Tenant a monetary order in the amount of \$1,400.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 8, 2017

Residential Tenancy Branch