Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened in response to an application and amended application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of double the security and pet deposits - Section 38.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?
Is the Tenant entitled to return of double the security and pet deposit?

Background and Evidence

The Parties agree as follows: In February 2013 the Tenant and her sister entered into a written tenancy to rent two suites (upper and lower) in one side of a duplex for $1,600.00 per month. Both the Tenant and the sister were named as Tenants on the agreement. The sister had a previous tenancy for these units for which a security and pet deposit had been paid. These deposits were carried over to the tenancy with the sister and the Tenant. As of either January 1 or 31, 2016 the sister moved out and the Landlord entered into an oral tenancy agreement with the Tenant and a roommate. The security deposit was again carried over with the Tenant's permission to the latest

tenancy. Rent of $1,600.00 continued. The tenancy ended on August 31, 2017 pursuant to an undisputed two month notice to end tenancy for landlord's use. The Landlord received the Tenant's forwarding address on August 31, 2017. The Landlord has not returned the security or pet deposit to any person and has not made an application to claim against the deposits. No move-in condition inspection report was completed by the Landlord.

The Tenant states that her sister originally paid a security deposit of $800.00 and a pet deposit of $600.00. The Landlord states that the Tenant only paid a security deposit of $400.00 and a pet deposit of $300.00. I note that in the Decision dated September 13, 2017 that the Landlord gave evidence of continuing to hold a security deposit of $800.00. This Decision does not provide any evidence of a pet deposit. The Tenant claims return of double the security and pet deposits.

The Tenant states that she was away from her unit between August 2 and 16, 2017 due to her father's illness and passing. The Tenant states that while away and without the Tenant's knowledge the Landlord had a company attend the unit to work on the deck. The Tenant states that when she returned on August 16, 2017 items that had been on the deck were found on the front yard of the building and some items from the deck were missing altogether. The Tenant states that the monetary worksheet provided for the claims on the missing items was a draft copy. The Tenant claims for the missing items as follows:

- $40.00 for a missing and old garbage can that was replaced for $15.00;
- $425.00 for a 1.5 year old missing cooler, 2 year old missing footstool, a missing tarp of unknown age, and a missing rubber maid bin of a couple years age containing miscellaneous camping items;
- $150.00 for a damaged cat post of approximately 2 or 3 years old; and
- $100.00 again for the missing foot stool.

Other than the garbage can, none of the items have been replaced by the Tenant.

The Tenant withdraws the claim for the recycle bin as it was located.

The Tenant states that the company working on the deck scratched her car that was parked under the deck. The Tenant states that no claim was made on her car insurance for this damage. The Tenant claims a quoted cost of $60.00 for the repair of the scratch. This repair has not been done.

The Tenant states that when she returned to discover missing items the Tenant underwent significant stress for this discovery and from collecting things from the front yard. The Tenant states that she believes the missing items were stolen from the front yard. The Tenant claims $100.00 for her stress.

The Landlord states that the Tenant was given a handwritten notice on August 11, 2017 of the work to be done on August 14, 2017 and to remove her belongings from the deck. The Landlord states that this notice was posted on the front door and that the persons living in the lower part of the unit were verbally informed of the work on the deck that did not attach to the lower unit. The Landlord states that she did not know the Tenant was not present at the time. The Landlord states that she did not monitor the work of the company and was not present while the company was at the rental unit. The Landlord states that the company informed the Landlord that the Tenant's belongings were placed by the front door and while the Landlord was aware that this area was open to the public the Landlord did nothing to secure the items. The Landlord states that when she attended at the unit on August 16, 2017 the cooler and tarp were still at the front door. The Tenant states that she had two coolers and that only one cooler was missing.

The Landlord states that she saw the cat post during the tenancy and that the cat post was not as new as claimed by the Tenant. The Landlord states that the Tenant should not have parked in car under the deck as this is not allowed under the bylaws. The Landlord states that the Tenant was not informed by the Landlord that parking was not

allowed in that area. The Landlord states that the Tenant was under stress from her father's passing and was therefore more sensitive and volatile. The Landlord states that she got screaming phone calls from the Tenant. The Landlord argues that the stress felt by the Tenant was due to the death of her father and not because of the items on the front yard. The Landlord argues that the Tenant should have had tenant insurance for her missing items.

The Tenant states that mold was present in the house and that she was ill because of the mold. The Tenant provides no supporting medical documentation. The Tenant claims $100.00. When asked if mold was present the Landlord replied that "I washed it off". The Landlord then stated that it was only dirt that was washed off. The Landlord refers to an earlier Decision dated September 13, 2017 and noted on the cover of this Decision. The Tenant also provides a written submission that had been provided for this previous hearing.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the agreed facts, I find that the Landlord collected both a security and pet deposit that was carried over to the current tenancy. I also find the Landlord received the Tenant's forwarding address on the same day as the tenancy ended and neither returned the deposits or made a claim against the deposits. Given the Landlord's evidence at the previous hearing of holding $800.00 as a security deposit, I consider the Landlord's evidence at this hearing of only having collected $400.00 as a security deposit to hold no credibility. I therefore prefer the Tenant's evidence that the Landlord collected and continues to hold $800.00 as a security deposit and $600.00 as a pet deposit. As the Landlord did not return these deposits to any Tenant and as the Landlord did not make

any claim against the security and pet deposits I find that the Landlord must now return double the combined pet and security deposit of **$2,800.00** (800.00 x 2 + 600.00 x 2). As neither Party gave evidence of when the security and pet deposit was originally collected I am unable to determine that any interest is owed on that amount.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Section 91 of the Act provides that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Regardless of whether the Tenant was properly given a notice of work being done on the deck, the Landlord owed the Tenant a duty of care in ensuring that none of the Tenant's property, whether left on the deck or elsewhere, was damaged by its authorized agents, the contractors. Accepting the undisputed evidence that the Tenant's belongings were left open to theft by the contractors, that the Landlord was informed of this and did nothing to secure the items, and accepting that some or many of these items were lost to theft, I find that the Landlord breached its duty of care to the Tenant resulting in a loss to the Tenant and an entitlement to compensation. There is no evidence that a tenant's content insurance would cover a loss where a landlord is negligent. However as the items lost were aged and therefore not of the same value as the claimed cost of new items and as the costs claimed have not been incurred I find that the Tenant has only substantiated a nominal entitlement of **$100.00** for the loss caused by the Landlord's breach. I consider that the Tenant's claim for compensation for stress over the loss of these items to be sufficiently compensated by the nominal entitlement.

As there is no evidence that the damage to the car could not have been claimed under the Tenant's auto insurance for less cost than being claimed against the Landlord, I find that the Tenant failed to take steps to mitigate the costs claimed and I dismiss the claim for the scratch to the car.

Given the lack of supporting medical evidence and considering the Landlord's evidence of no mold I find on a balance of probabilities that the Tenant has not substantiated that mold was either present or caused an illness. I therefore dismiss the claim in relation to mold.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$2,900.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: November 17, 2017

Residential Tenancy Branch