



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, MNDC, OLC, FF

Introduction

This matter dealt with an application by the Tenant for access to the rental unit, for loss or damage under the Act, regulations and tenancy agreement, for the Landlord to comply with the Act, regulations and tenancy agreement and for the recovery of the filing fee.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on January 25, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

During the Hearing the Tenant said the Police assisted him in recovering his belongings so he no longer needs access to the rental unit. The Tenant’s claim for access to the rental unit is withdrawn.

Issues(s) to be Decided

1. Is the Tenant entitled to a monetary claim for loss or damage and for the return of the security deposit?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?
3. Is the Tenant entitled to recover the filing fee from the Landlord?

Background and Evidence

This tenancy started on July 1, 2017 as a verbal month to month tenancy. The tenancy ended January 5, 2018. Rent was \$600.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$300.00 at the start of the tenancy. The Tenant said no condition inspection reports were completed for this tenancy.

The Tenant said that the Landlord sent him a text message on January 4, 2018 advising the Tenant the Landlord was ending the tenancy that night. The Tenant said when he arrived home on January 5, 2018 the locks were changed on the rental unit and the Landlord had taken his belongings. The Tenant continued to say he gave the Landlord his forwarding address on January 25, 2018. The Tenant said no condition inspection reports were done. The Tenant continued to say he asked the Landlord for his security deposit back, but the Landlord has not sent the deposit to him.

The Tenant continued to say he is requesting his security deposit of \$300.00 to be returned to him as well as his January, 2018 rent of \$600.00. The Tenant gave affirmed testimony that he paid the Landlord \$600.00 in cash for the January 2018 rent and the Landlord ended the tenancy illegally on January 5, 2018. The Tenant said he is requesting the return of his January 2018 rent because the Landlord evicted him illegally.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and**
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I accept the Tenant's testimony that he gave the Landlord a forwarding address on January 25, 2018. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address, nor did the Landlord apply for dispute resolution by February 9, 2018. Consequently I find for the Tenant and grant an order for double the security deposit of \$300.00 in the amount of $\$300.00 \times 2 = \600.00 .

Further Section 44 of the Act says how a tenancy ends:

A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Further section 52 of the Act says:

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

I find the Landlord did not comply with the Act by giving the Tenant a text message ending the tenancy. Consequently the Tenant lost facilities and services agreed to in the verbal tenancy agreement. The Tenant paid for the services and facilities with the January 2018 rent of \$600.00. I accept the Tenant's testimony that he did not get value for his rent payment because the Landlord ended the tenancy illegally. I find for the Tenant in the amount of 26 days of 31 days in January 2018 as the Tenant had possession of the rental unit from January 1, 2018 to January 5, 2018. I award the Tenant $\$600.00 \times 26/31 = \503.23 as compensation for the Tenant's lost use of the rental unit for January 2018.

As the Tenant was successful in this matter I also order the Tenant to recover the filing fee from the Landlord in the amount of \$100.00. Pursuant to section 38, 67 and 72 of the Act a monetary order for \$1,203.23 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$600.00, lost rent in the amount of \$503.23 and the \$100.00 filing fee.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$1,203.23 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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 19, 2018

Residential Tenancy Branch