



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 6, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on January 13, 2020 as a teleconference hearing. Only the Tenant appeared and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 25 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served on the Landlord by registered mail on September 13, 2019. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on September 18, 2019, the fifth day after their registered mailing. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was 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. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to an order that the Landlord returns all or part of the security deposit, pursuant to section 38 of the *Act*?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on December 1, 2018 and ended on July 22, 2019. During the tenancy, rent was due in the amount of \$1,800.00 per month. The Tenant stated that she paid a security deposit of \$900.00 to the Landlord. The Tenants submitted a copy of the tenancy agreement in support of this testimony.

The Tenant testified that the previous owner of the rental property sold it to the new Landlord in June of 2019, who is the Respondent named in this Application. The Tenant stated that the Landlord wished to occupy the rental unit and therefore served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use dated June 27, 2019 with an effective date of September 1, 2019.

The Tenant stated that on July 7, 2019 she noticed that there was a bat infestation at the rental property. The Tenant stated that a bat landed on her chest while she was laying in bed. The Tenant stated that she notified the Landlord regarding the bat problem. The Tenant provided a copy of the email exchange between the Tenants and the Landlord. The Tenant stated that the Landlord would have been made aware of the bat issue during the home inspection required when she purchased the home.

The Tenant stated that they were forced out of the home for safety reasons as a result of the bats. The Tenant stated that they were required to travel for medical treatment in relation to being exposed to the bats. The Tenant stated that they had not yet found alternate accommodations, therefore, they were required to stay in an R.V. Site and pay for storage for their belonging. As such, the Tenants have set out the following claims on their monetary worksheet;

Storage costs for two months \$187.50
Travel Expenses \$413.00
Rental of an R.V Site \$686.00
Postage fees for the Application \$11.67

The Tenants are also claiming for the full return of their security deposit. The Tenant stated that she provided her forwarding address to the Landlord by registered mail on August 8, 2019. The Tenant provided a copy of the registered mail receipt in support. The Tenant stated that the Landlord has not yet returned any amount of the security deposit to the Tenants. If successful, the Tenants are seeking the return of the filing fee paid to make the Application.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 Tenants 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 Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenants are claiming for compensation relating to having to move as a result of a bat infestation in the rental property. The Tenants are claiming for storage fees as well as the R.V. Site rental after being displaced from their home as a result of the bats. The Tenants are claiming for travel expenses relating to the medical appointments for treatment after having been exposed to the bats. The Tenants are also claiming for the postage fees associated with making the Application.

In this case, I find that the Tenants provided insufficient evidence to demonstrate that the Landlord was aware of the bat infestation prior to the email conversation between

the Tenant and the Landlord on July 20, 2019 before the Tenants vacated the rental unit on July 22, 2019. I find that it is more likely than not that the Tenant were moving out of the rental unit in compliance with the Two Month Notice to End Tenancy as demonstrated in the Tenant's 10 Day Notice to End Tenancy which was sent to the Landlord on July 20, 2019 with an effective vacancy date of July 31, 2019.

In light of the above, I find that the Tenants chose to end the tenancy earlier than the effective date of the Two Month Notice. I further find that the Landlord did not breach the Act as the Tenants have provided insufficient evidence to demonstrate that the Landlord has prior knowledge of a bat infestation. As such, I dismiss the Tenants' monetary claims for storage fees, R.V. Site rental, and travel expenses, without leave to reapply.

In relation to the Tenants' claim for postage fees in the amount of \$11.67, I find this expense is not recoverable by the parties involved in the dispute resolution process, therefore this portion of the Tenants' claim is dismissed without leave to reapply.

With respect to the Tenants' Application for the return of their security deposit, Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later.

When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenants vacated the rental unit on July 22, 2019 and provided the Landlord with their forwarding address by registered mail on August 8, 2019. The Tenants provided a copy of the registered mail tracking receipt in support. Based on the oral and written submissions of the Applicants, and in accordance with section 88 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenants' forwarding address on August 13, 2019, the fifth day after their registered mailing.

As there is no evidence before me that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until August 28, 2019, to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord in the amount of \$1,800.00 (\$900.00 x 2 = \$1,800.00).

Having been partially successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,900.00 (\$1,800.00 + \$100.00 = \$1,900.00).

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$1,900.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: January 17, 2020

Residential Tenancy Branch