



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for return of the security deposit or pet damage deposit.

The landlord and the tenant both attended the conference call hearing, both provided evidence in advance of the hearing, and provided affirmed testimony. The tenant also called a witness who gave affirmed testimony. The parties were also given the opportunity to cross examine each other and the witness on their evidence. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to return of the security deposit or pet damage deposit?

Background and Evidence

This month-to-month tenancy began on December 15, 2009 and ended on August 31, 2010. Rent in the amount of \$1,100.00 per month was payable in advance on the 15th day of each month and there are no rental arrears. The tenant testified that she was also required to pay 60% of the utilities, and there are no arrears. On December 8, 2009 the landlord collected a security deposit from the tenant in the amount of \$550.00. No move-in or move-out condition inspection reports were completed.

The tenant testified that she asked the landlord prior to vacating to conduct a move-out condition inspection while she was still there and he could then collect the keys to the unit. The landlord declined because he was out of town at the time. She asked if his

dad could do it, and he stated that he couldn't. He told her that he would look over the unit upon his return and let her know when or how much of the security deposit he would return after he had assessed the rental unit. The tenant further testified that she cleaned the unit before moving out and it was cleaner than when she moved in. She stated that she put the keys for the rental unit in the landlord's mail box along with her written forwarding address, as instructed to do so by the landlord.

She did not hear anything further from the landlord, and called him about a week after vacating the rental unit and he told her there were still damages to be assessed, someone was still going to look at the yard and other assessments were not yet done.

The tenant further testified that she has not been served with an Application for Dispute Resolution by the landlord, she has not received any portion of the security deposit back from the landlord, and she did not authorize him to keep any portion of it.

The landlord testified that the parties previously appeared before a Dispute Resolution Officer and an Order of Possession was granted in favour of the landlord, but the Decision resulting from that hearing did not deal with the security deposit.

He further testified that he told the tenant a week after she moved out that he intended to keep the security deposit for damages. The landlord further stated that he did not know he had to apply for dispute resolution in order to retain a security deposit, nor did he know that his right to claim against a security deposit for damages is extinguished if the landlord fails to complete move-in and move-out condition inspection reports with the tenant.

Analysis

The *Residential Tenancy Act* states:

38(1) 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.

Further,

- 38 (6)** 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.

In the circumstances, I find that the tenant left the keys and her written forwarding address in the landlord's mail box on August 31, 2010 as instructed by the landlord. Section 90 (d) states that delivery in that fashion is deemed to have been served or delivered on the 3rd day after it is left. Therefore, the landlord is deemed to have received the tenant's written forwarding address on September 3, 2010. I further find that the landlord has not returned the security deposit or applied for dispute resolution within the 15 days required by the *Act*, and therefore, the tenant is entitled to a monetary order in the amount of double the security deposit.

The tenant's application also included a claim for utilities, but did not lead any evidence with respect to that portion of the application. I did not question the tenant or the landlord about that issue, and I therefore dismiss that portion of the application with leave to reapply.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant in the amount of \$1,100.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: February 08, 2011.

Residential Tenancy Branch