



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit, money owed or compensation due to damage or loss and recovery of the filing fee.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began March 1, 2011 with monthly rent of \$400.00; the tenant paid a security deposit of \$200.00. The tenant stated that part of the residential property is used as a hostel and part of the residential property is used for rental units.

The tenant testified that on September 27, 2011 he paid the rent for September 23 through October 23, 2011. The tenant stated that the landlord then advised him that he would have to vacate by 12:00 noon on September 29, 2011. The tenant stated that on September 30, 2011 he was locked out of his room.

The tenant then sent the landlord his forwarding address by email on October 13, 2011 and this email was sent to the email address that the landlord uses for booking reservations. The tenant also sent his forwarding address in writing to the landlord on October 26, 2011 but that the landlord has still not returned his \$200.00 security deposit.

The tenant stated that he was never served an eviction notice and that the landlord did not have an order of possession or writ of possession for the rental unit. The tenant

stated that due to the short notice of the eviction he had to hire a trailer to move his belongings and hire helpers. The tenant states that he also suffered a loss of income as he had to temporarily store all of his belongings in his small workshop and could not work.

The tenant in this application is seeking \$1147.42 compensation for the following:

- ½ day lost wages September 30, 2011 while hiring movers - \$100.00
- ½ day lost wages October 1, 2011, belonging in workshop - \$100.00
- 1 day lost wages October 3, 2011, cleaning out shop and moving - \$200.00
- Unused rent - \$334.43
- Return of security deposit - \$200.00
- Trailer rental - \$50.00
- 5 movers/helpers at \$20.00 each – \$100.00
- Case of beer for movers/helpers - \$62.99

Analysis

The tenant stated in his testimony that the lower floor of the residential property is used as a hostel for travellers and the upper floor units are rented out to tenants in long term tenancies. I therefore find that the Residential Tenancy Act does have jurisdiction over this matter as it pertains to a tenancy and not vacation or travel accommodation.

Residential Tenancy Act **section 4 What this Act does not apply to** speaks to:
(e) living accommodation occupied as vacation or travel accommodation

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit. Accordingly I find that the tenant is entitled to a monetary order for **\$400.00**.

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for compensation due to damage or loss. The landlord evicted the tenant without proper notice, an order of possession from this court or a writ of possession from the Supreme Court of British Columbia. I therefore

find that the tenant is entitled to return of the 'unused' portion of the tenants rent for the period of September 30 through October 23, 2011. Accordingly I find that the tenant is entitled to a monetary order for **\$309.70**.

Residential Tenancy Act **section 44 How a tenancy ends** speaks to:

(1) 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:

(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];

Landlord's notice sections **46 through 50 (2) A notice under this section must comply with section 52 [form and content of notice to end tenancy]**.

In relation to the tenant's claim for lost wages, trailer rental, movers/helpers and beer, I find pursuant to section 62(2) of the *Act* that in the absence of any verification of the costs claimed, that the claim for compensation of costs is dismissed without leave to reapply.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for **\$759.70** in return of double the security deposit and compensation due to damage or loss and I grant the tenant a monetary order under section 67 of the *Act* for this amount.

If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: December 13, 2011.

Residential Tenancy Branch