



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 was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit and rent payment made?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties agreed that they entered into a tenancy and signed an agreement. The tenant did not receive a copy of the agreement; a copy was submitted upon my request.

The tenancy agreement indicated that on February 17, 2012 the tenant signed a month-to-month tenancy agreement that was to start on that date; he was given the keys on February 17, 2012. Rent was \$1,600.00 per month, due on the 1st day of each month. A deposit of \$800.00 was paid on February 14, 2012. This information duplicated that given by testimony during the hearing.

When the tenant arrived at the unit on February 17, 2012, he discovered the landlord there. An electrical repair needed to be made. The landlord stated the breaker for the washing machine and dryer was malfunctioning. The tenant also found personal items that belonged to the landlord, in the unit.

The tenant had rented a furnished unit. The tenancy agreement indicated that window covering had been included; but both parties initialled, to remove that condition.

The landlord stated that once the tenant had the keys he was free to move into the unit. On February 18, 2012 at 4 p.m. the tenant called the landlord to say he would not take possession of the unit.

The tenant said he did not take possession as a result of people being in the unit, the presence of belongings and the electrical repairs that needed to be completed. The tenant said he was barred from moving in on February 17, and that this caused the tenancy agreement to fail.

The tenant paid \$2,000.00 for pro-rated February rent and rent for March 2012. He wants the rent payments returned and the deposit returned.

The landlord confirmed receipt of the written forwarding address given to her via email on August 2, 2012. The deposit has not been returned and a claim against the deposit was not made.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 16 of the Act provides:

Start of rights and obligations under tenancy agreement

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

As the tenant signed an agreement to rent the unit, I find that his rights and obligations under the Act were established on the date he signed the agreement.

Once the tenancy was established both parties were bound by the Residential Tenancy Act. Therefore, I find that in order to terminate the tenancy the tenant was required to give 1 months' written Notice, in accordance with section 45 of the Act.

The tenant refused to take possession of the unit as, from what I have determined, was a minor electrical repair that was being addressed by the landlord. In fact, the legislation requires a landlord to make repairs, so I cannot find that the presence of an electrician was an issue, other than notice of entry should be given as provided by section 29 of the Act. Even if notice of entry was not given, this one-time entry for the purpose of a repair on the day the tenant was to move in; I find it does not form cause to repudiate the tenancy agreement.

Further, there was no evidence before me that the unit contained the landlord's possessions. This was a furnished unit that was expected to have items left in it for the tenant's use.

Section 38(10) of the Act requires a landlord to return a deposit within 15 days of receipt of the tenant's written forwarding address. When a landlord does not return the deposit

or submit a claim against the deposit within fifteen days, then section 38(6) of the Act determines that the landlord must return double the deposit.

Therefore, as the landlord had the forwarding address on August 2, 2012, and did not return the deposit, I find that the tenant is entitled to return of double the \$800.00 deposit.

As the tenant failed to give the landlord proper notice to end the tenancy and, based on the fact that the landlord had possession of the unit on February 18, 2012, I dismiss the tenant's claim for return of rent paid. Proper notice given on February 18 would have been effective on March 31, 2012 and rent would be due until that date.

I find that the tenant's application has some merit and that the tenant is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for each party.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,650.00, which is comprised of double the \$800.00 deposit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The claim for return of rent paid is dismissed.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,650.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 18, 2012.

Residential Tenancy Branch