



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 23, 2012 by the Tenant to obtain a Monetary Order for the return of his security deposit plus money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: his written statement.

The Landlord submitted documentary evidence which included, among other things, copies of: a USB storage device consisting of documents and photos; and a letter from the RCMP dated March 4, 2013.

The Landlord confirmed she did not provide a written summary of what was included on the USB device nor did she contact the Tenant prior to the hearing to determine if he was able to view the images stored on the device. She stated that there were word

documents and numerous photos, all which could have been printed, but she submitted them on the USB because she was told that was acceptable.

The Tenant confirmed receipt of the USB storage device and stated that he could open all the documents but that he was not able to view the photos as they were saved in a format that is not recognized by his computer.

The parties confirmed they entered into a written month to month tenancy that began on August 20, 2012. Rent was payable on the last day of each month in the amount of \$1,500.00 and on approximately August 15, 2012 the Tenant paid \$750.00 as the security deposit. No move in condition inspection report form was completed or signed although the Landlord left the tenant with a partially completed form to complete on his own. The Tenant vacated the property by November 28, 2012 and the Landlord made no arrangements for a move out inspection.

The parties confirmed that text message was a normal form of communication between them and the Tenant provided the Landlord his forwarding address in writing by text message on December 10, 2012.

The Tenant advised that he was served two Notices to end his tenancy, a 1 Month Notice served October 31, 2012, and a 2 Month Notice issued a few days later. He said he informed the Landlord that he would be moving out by the end of November 2012.

The Tenant stated that he is seeking compensation for the return of double his security deposit plus compensation for the Landlord allowing another tenant to move into the rental unit, amongst his possessions, prior to his tenancy ending. He advised that he paid his full rent for November; however, the Landlord allowed someone else to move into his room and changed the locks on the rental unit, with his possessions inside, prior to the end of November 2012.

The Landlord confirmed she changed the locks on November 28, 2012 and stated she sent the Tenant a text message advising him that he needed to contact her if he wanted access to the unit to move out the rest of his possessions.

The Landlord argued that it was the Tenant's roommate who allowed the new tenant to move in and not her. Upon further clarification she stated that the Tenant had informed her, near the beginning of his tenancy, that he would be getting a roommate, which she agreed to. She said the roommate paid her rent to the Tenant and had no dealings as a tenant with the Landlord. Then after the Tenant was served the eviction notices and decided to move out the roommate informed her that she wanted to stay living there with another person. The Landlord agreed and allowed the new tenant and roommate to occupy the rental unit and she arranged to change the locks as they had requested.

The Landlord confirmed that the new tenant S.G. was allowed to move into the rental unit and into the Tenant's bedroom prior to the Tenant removing his possessions and prior to November 30, 2012. The new tenant paid the Landlord rent on December 1,

2012 and the previous roommate paid her rent as a tenant on approximately December 3, 2102.

The Landlord initially stated that she had attempted to return part of the deposit but had no proof that she sent him a cheque and later closed that bank account. The Landlord acknowledged that she has not returned the security deposit to the Tenant; she does not have the Tenant's written permission to keep the deposit; she does not have an Order issued by the *Residential Tenancy Branch* authorizing her to keep the deposit; and she has not made an application for dispute resolution.

Analysis

The *Residential Tenancy Branch Rules of Procedure # 11.8* stipulates which digital evidence will be accepted and how it may be submitted as follows:

Digital evidence includes photographs, audio recordings, video recordings or other material provided in an electronic form that cannot be readily reproduced on paper.

Digital evidence must be accompanied by a written description and meet the time requirements for filing and service established in Rule 3.1 and Rule 3.5.

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible and so that all parties have 5 days with full access to the evidence.

If any party is not able to hear or see the digital evidence because it was not provided in an accessible way, the digital evidence may or may not be considered.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide the Residential Tenancy Branch with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

Supporting information

The party providing the digital evidence must make the evidence available at least five full days before the hearing. This does not include the days in which the party is asking the other party if they are able to gain access to the evidence.

In this case all of the Landlord's evidence was provided on a USB storage device and consistent of documents and photos which all could have been reproduced on paper. The Tenant confirmed receipt of the USB storage device and stated that he could open the documents but he could not view or open the photos. Accordingly, I find the Landlord's evidence was not submitted in accordance with 11.8 of the Rules of Procedure, and will not be considered in my decision. I did however consider the Landlord's oral testimony and the submissions provided in printed form.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case I find the Tenant's roommate to have been an occupant, as defined above, and therefore she had no rights or obligations under the original tenancy agreement.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case the Tenant was served a 1 Month Notice on October 31, 2012, he paid is full rent for November 2012, and he agreed to vacate the unit in accordance with the Notice by November 30, 2012.

The evidence before me describes what I find to be an egregious breach of the Act by the Landlord. The Landlord allowed a new tenant to move into the unit, amongst the Tenant's possessions, prior to the end of the tenancy, in breach of section 28(c) of the Act; entered the rental unit in breach of section 29(d) of the Act; and changed the locks to the rental unit without providing the Tenant with a copy of the key in breach of section 31(1) of the Act, these facts were confirmed by the Landlord.

As per the aforementioned, I find the Landlord ended this tenancy illegally, in breach of the Act, seizing exclusive possession and use of the rental unit prior to November 30, 2012, putting the Tenant's possessions at risk, without providing the Tenant an opportunity to attend a move out inspection and without the proper execution of a

condition inspection report, which is a breach of section 35 of the Act. Accordingly, I award the Tenant aggravated damages as claimed in the amount of **\$750.00**.

This tenancy ended near the end of November 2012, and the Landlord was in receipt of the Tenant's forwarding address on December 10, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than December 25, 2012. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of double his security deposit plus interest in the amount of **\$1,500.00** (2 x \$750.00 + \$0.00 interest).

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$2,250.00** (\$750.00 + \$1,500.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: March 14, 2013

Residential Tenancy Branch

