



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

The Tenant is applying for return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord was served with the Notice of Hearing documents by registered mail.

It is important to note that the Landlord provided documentary evidence, the contents of which suggested that the Landlord believes she has a monetary claim against the Tenant for damages. I confirmed with the Landlord that she has not yet filed an Application for Dispute Resolution against the Tenant. I explained that the Hearing was scheduled to consider the Tenant's Application for Dispute Resolution only and that she is at liberty to file her own Application if she chooses to do so.

The Tenant provided a CD in evidence. With respect to digital evidence, the Rules of Procedure provide:

3.10 Digital evidence

Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

Digital evidence must be accompanied by a printed description, including:

- a table of contents
- identification of photographs, such as a logical number system
- a statement for each digital file describing its contents
- a time code for the key point in each audio or video recording, and
- a statement as to the significance of each digital file.

To ensure a fair, efficient and effective process, identical digital evidence and the accompanying printed description must be served on each Respondent and submitted to the Residential Tenancy Branch.

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 in any event so that all parties have 7 days with full access to the evidence. If a party is unable to access the digital evidence, the Arbitrator may determine that the digital evidence will not be considered.

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 so that the party submitting and serving digital evidence can meet the requirements of Rules 3.14 and 3.15.

The submission and service of digital evidence must meet the time requirements for filing and service established in Rule 3.1, 3.2, 3.14 and Rule 3.15.

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.

I was unable to open the CD. The Tenant did not ask the Landlord if she could access the CD. Therefore, I have not considered the Tenant's electronic evidence.

I have only recorded the relevant testimony with respect to the Tenant's Application in this Decision.

Issue to be Decided

Is the Tenant entitled to a monetary award pursuant to the provisions of Section 38(6) of the Act?

Is the Tenant entitled to a monetary award for damages arising from bedbugs?

Background and Evidence

This tenancy began on September 19, 2014 and ended on October 9, 2014. Monthly The Tenant paid a security deposit in the amount of \$650.00 at the beginning of the tenancy.

The Tenant testified that she had to move out of the rental unit because she was badly bitten by bed bugs. The Tenant seeks a monetary award in the amount of \$650.00 for damages.

The Tenant stated that she provided her forwarding address to the Landlord, by registered mail, sent on October 17, 2014. The Tenant provided the tracking numbers for the registered mail. The Landlord acknowledged receipt of the Tenant's forwarding address. The Landlord acknowledged that the Tenant did not give her permission to retain any of the security deposit and that she has not returned any of the deposit to the Tenant. The Tenant seeks a monetary award in the equivalent of double the amount of the security deposit.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant alleges damages as a consequence of bedbugs in the rental unit; however, she provided insufficient evidence that there were bedbugs, or that the Landlord was responsible for introducing the bedbugs in to the rental unit. The Tenant provided insufficient evidence of the actual amount required to compensate for the claimed loss. Therefore, this portion of the Tenant's claim is dismissed.

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep the security deposit.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Based on both parties' testimony, I find that the Landlord did not file an application for dispute resolution against the security deposit, or return the full amount of the security deposit within 15 days of receipt of the Tenant's forwarding address in writing.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit, less the amount the Landlord returned ($\$650.00 \times 2 = \mathbf{\$1,300.00}$).

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlord retains the right to file an application for damages under Section 67 of the Act, if she so desires.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,350.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 20, 2015

