



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – MNSD, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord permitted to keep part of the security deposit?
- Is the tenant entitled to recover double the security deposit?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2015 for a fixed term tenancy for one month ending on July 31, 2015. Rent for this unit was \$1,500.00 per month due on July 01, 2015. The tenant paid a security deposit of \$750.00 on June 04, 2015. The tenant vacated the rental unit as agreed on July 31, 2015. Both parties attended a move in and a move out condition inspection of the unit and the tenant provided her forwarding address on the move out inspection report on August 01, 2015.

The landlord's application

The landlord testified that they retained \$388.28 of the security deposit and sent the tenant a cheque for the balance of \$361.72 on August 11, 2015. The tenant did not receive this cheque and then came to the office to collect another cheque on August 21, 2015. The landlord testified that part of the security deposit was retained because the tenant failed to leave the rental unit clean at the end of the tenancy failed to pay utilities, a late fee and the full amount of rent. The landlord referred to the move out inspection report and testified that the sum of \$100.00 was paid to have the unit cleaned after the tenant vacated.

The tenant was responsible for electricity in the unit in accordance with the tenancy agreement and failed to pay that. The landlord referred to the electricity bill for the period from June 27 to July 28 for \$20.62. The landlord prorated this bill for the days the tenant occupied the unit and seeks to recover the sum of \$13.28.

The landlord testified that the tenancy agreement provides for a late fee to be charged for any month in which rent is not paid on time. As the tenant failed to pay rent on July 01, 2015 the landlord seeks to recover a late fee of \$25.00.

The landlord testified that the tenant withheld \$250.00 from her rent for July, 2015. The landlord testified that the tenant could only take possession of the rental unit on July 02, 2015 and was given the keys on that date. The tenant and landlord had an agreement that the tenant could move out a day later on August 01, 2015 to compensate the tenant for not being able to take possession on July 01, 2015. The tenant withheld \$250.00 from her rent instead. There was no reason the tenant could not move in on July 02, 2015 as the door, although damaged, was secure and the bathroom sink was repaired on July 03, 2015.

Due to the above the landlord testified that they seek an Order permitting them to keep the amount of \$388.28 from the security deposit. The landlord also seeks to recover the filing fee of \$50.00.

The tenant disputed the landlord's claims. The tenant testified that the condition inspection report does not state that the unit was left unclean and no mention of extra cleaning was made at the move out inspection.

The tenant agreed that she did not pay electricity for the month of her tenancy and does not dispute the landlord's claim to recover \$13.28.

The tenant disputed the landlord's claim for a late fee. The tenant testified that she was not able to move into the unit on July 01, 2015 and so did not pay the rent on that date. The tenant testified that she did not move into the unit until July 03, 2015 as the door and sink had not been repaired. The tenant agreed she did not pay rent until July 04, 2015 as she was trying to sort out with the landlord's agent how much compensation they were going to give the tenant for not being able to move into the unit on July 01, 2015. The landlord threatened to evict the tenant so

the tenant then made a rent payment on July 04, 2015 to an amount less two days and for the tenant's expenses in having to store her belongings and pay an extra amount for her rental truck.

The tenant disputed the landlord's claim for unpaid rent. The tenant testified that she arrived at the unit on July 01, 2015 with her belongings in a rental truck. The landlord's agent informed the tenant that the previous tenants had still not vacated and were being evicted. These tenants had damaged the front door and a sink. The tenant had to arrange to rent some storage space at a cost of \$150.00 as an agent told the tenant that he would have to repair the door and sink before she could move in. The tenant testified that the truck had been rented for three hours at \$19.99 which should have been sufficient to move the tenant's belongings into the unit; however, due to the delay the tenant had to keep the truck for 24 hours and incurred charges of \$79.00 plus tax. The tenant testified that as she had to use her rent money for these extra charges and had to stay somewhere else for two days so she deducted \$250.00 from her rent.

The tenant testified that the landlord's agent KH would not negotiate with the tenant so the tenant called the director of the company and he told the tenant that it would be fine if she paid \$1,250.00. The tenant testified that the landlord did not offer the tenant an extra day to move out at the end of the tenancy. It had already been agreed with the previous agent for the landlord that the tenant could move out on August 01, 2015.

The landlord disputed the tenant's claims and testified that this was a furnished unit and the tenant would not have required much storage for personal belongings and would not have had to keep the rental truck for 24 hours.

The tenant's application

The tenant testified that she did not give the landlord verbal or written permission to keep all or part of the security deposit. The tenant testified that she provided her forwarding address in writing on August 01, 2015 at the move out inspection. The landlord did not return the security deposit and there is no proof to show a cheque was sent on August 11, 2015. The landlord did not file their application until August 21, 2015. The tenant seeks to recover double the security deposit and her filing fee of \$50.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on July 31, 2015 and the landlord received the tenant's forwarding address in writing on that date. As a result, the landlord had 15 days from the end of the tenancy, until August 15, 2015, to return the tenant's security deposit or file an application to keep it. I find the landlord did not return the security deposit within 15 days and has not filed an application to keep it until August 21, 2015. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$1,500.00** pursuant to section 38(6)(b) of the *Act*.

As the landlord did return a portion of the tenant's security deposit on August 21, 2015 I will deduct the amount of **\$361.72** from the tenant's monetary award.

With regard to the landlord's claim that the tenant failed to clean the unit; the landlord has the burden of proof in this matter and there is insufficient evidence to show that the tenant did not leave the rental unit reasonable clean. The move out inspection report does not indicate that the unit was unclean and without corroborating evidence I find the landlord is not entitled to charge the tenant for cleaning.

With regard to the landlord's claim that the tenant failed to pay utilities; the tenant agreed at the hearing that the landlord may deduct the amount of **\$13.28** from the security deposit.

With regard to the landlord's claim for a late fee; the tenancy agreement does provide for a late fee of \$25.00; however the tenancy agreement also provides that the tenant can take possession of the unit on July 01, 2015. The unit was not available on July 01, 2015 and the landlord would not negotiate any compensation with the tenant for the two days she was not able to live in the unit. I find therefore as the landlord failed to comply with the tenancy agreement first and that the tenant should have been compensated for any days she was unable to occupy the rental unit that it would be unfair for me to award the landlord a late fee.

Further to this I find the tenant should have been compensated by the landlord for days when she could not occupy the rental unit and for putting her belongings into storage. Although the tenant should have paid the rent in full and then applied for compensation by filing an application for dispute resolution, this does not mean the tenant is not entitled to compensation. The tenant withheld \$250.00 from her rent for July; the tenant would have been entitled to compensation of \$96.77 for two days she was unable to take possession of the rental unit, \$150.00 for storage of her belongings and a further undetermined amount for other costs such as the hire truck. As such I find it is reasonable that the tenant is compensated the amount of \$250.00 for being unable to take possession of the rental unit until July 03, 2015. As the tenant has already deducted this amount from her rent I find no further amounts are due to the tenant.

As the tenant has been largely successful with her application to recover double the security deposit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant

to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant pursuant to s. 38(6)(b), s. 67 and s. 72(1) of the *Act* for the following amount:

Double security deposit	\$1,500.00
Less amount returned	(-\$361.72)
Less unpaid utilities	(-\$13.28)
Filing fee	\$50.00
Total amount due to the tenant	\$1,175.00

Conclusion

The landlords is entitled to retain the amount of **\$13.28** from the security deposit pursuant to s. 38(4)(b) of the *Act*. This amount has been deducted from the tenant's monetary award

I HEREBY FIND largely in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,175.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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 01, 2016

Residential Tenancy Branch

