



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 1, 2020, wherein the Tenant requested return of her security deposit, monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on June 22, 2020. The Tenant's Agent and the Landlords called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. What should happen with the Tenant's security deposit?
3. Should the Tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided in evidence and which confirmed the following: this month to month tenancy began May 1, 2019; monthly rent was \$1,000.00 per month; and, the Tenant paid a \$500.00 security deposit.

The tenancy agreement was amended on September 28, 2019. The alterations included the following:

- A.C. was added as a Tenant;
- the rent was increased to \$1,200.00 per month in section 3 "Rent" and was initialled by the K.A. and A.C.;
- free laundry" was crossed off in section 3 "Rent" and was initialled by the K.A. and A.C.;
- "internet" was crossed off in section 3 "Rent" and was initialled by the K.A. and A.C.; and,
- A.C. signed the agreement and dated it September 28, 2019.

The Tenant's agent testified that although the Tenant paid rent until December 31, 2019, she moved out on December 19, 2019.

The Agent confirmed that a move in and move out inspection were completed.

The Tenant provided her forwarding address to the Landlord on November 28, 2019. A copy of this letter was provided in evidence before me.

Th Agent confirmed that the Landlord did not return the security deposit, nor did they make an Application for Dispute Resolution.

The Tenant alleged the Landlord illegally raised the rent. The Agent testified that due to the competitive rental market, the Tenant paid rent for the summer of 2019 while the unit was vacant and then moved in after the September 2019 Labour Day weekend. The Agent stated that the Landlord increased the rent by \$200.00 per month without issuing a proper notice of rent increase and requested another \$200.00 because the Tenant had an overnight guest more than 6 nights. The Tenant sought reimbursement of \$600.00 total paid for October, November and December 2019 pursuant to this \$200.00 increase.

The Agent also alleged that the Landlord cut off the internet and laundry on September 28, 2020 such that the Tenant then had to pay for her own internet laundry. She alleged the Landlord changed the password thereby denying the Tenant access to the internet. In this respect the Tenant sought \$60.00 per month for internet and \$156.00 representing two loads of laundry per week for 13 weeks.

The Tenant also sought recovery of the \$100.00 filing fee.

In response to the Tenant's claims, the Landlord R.B. testified as follows. He confirmed they received the Tenant's forwarding address at the end of November 2019. R.B. further confirmed that they did not file for dispute resolution at the time.

R.B. testified that they rented the suite to the Tenant as a single person. He stated that she moved in in September and after a few weeks it became clear that her boyfriend was living there. He discussed the situation with the Tenant and initially she stated that she wasn't sure what was going to happen as her boyfriend had his own place. On September 28, 2018 she informed the Landlord that her boyfriend would in fact be moving in. He testified that they discussed the cost, as he rented it to her at \$1,000.00 per month as a single person, and the Tenant and her boyfriend agreed to pay \$200.00 extra per month so that they could both be tenants. The Landlord noted that this is evidenced by the additions to the residential tenancy agreement which was signed by the Tenant and her boyfriend.

R.B. confirmed that they also agreed to remove internet and laundry at that time as well. He stated that when she first moved into the suite, he told her that internet was free but that if she wanted higher speed, or needed her own internet, she would need to pay for it. R.B. stated that the Tenant informed him that the internet was not good enough for her work and she decided to get her own.

R.B. denied changing the internet password. He stated that they gave it to her in writing and by text. He stated that following this an employee from an internet service provider showed up at the house and indicated he was going to install a new service for the basement.

R.B. stated that the Tenant was not pressured in any way to sign the alterations to the agreement; rather, he testified that the Tenant, her boyfriend, and the Tenant's mother agreed to the changes when the Tenant's boyfriend moved in.

R.B. further stated that the original agreement included laundry was for one person. R.B. confirmed that they agreed to remove the laundry when her boyfriend moved in and they signed the amended tenancy agreement on September 28, 2019.

In reply, the Tenant's Agent confirmed that she was there when the Tenant signed the alterations to the tenancy agreement; however, she claimed that the Tenant felt pressured to sign the agreement as if she didn't sign the Landlord threatened to kick her out.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I will first address the Tenant's request for return of her security deposit. The Tenant applies for return of her security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that she did not agree to the Landlords retaining any portion of her security deposit. I also find that the Landlords received the Tenants forwarding address in writing at the end of November 2019.

The Landlords conceded that they failed to return the Tenant's security deposit, and did not apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*. In failing to apply for dispute resolution, or return the deposit within 15 days, the Landlords must pay the Tenant double the security deposit pursuant to section 38(6). I therefore Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenant the sum of **\$1,000.00**, comprised of double the security deposit (2 x \$500.00).

The Tenant seeks monetary compensation from the Landlord for an alleged illegal rent increase as well as a reduction in services or facilities, namely the internet and laundry.

Section 14(2) of the *Act* provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. Based on the documentary evidence before me, and the testimony of the Landlord, I find that the Tenants agreed to an increase in rent as well as termination of their internet and laundry facilities when the Tenant's boyfriend moved into the rental unit.

The Tenant's advocate submitted that the Tenant felt pressured to sign the amended tenancy agreement; however, the Tenant did not attend the hearing to provide this testimony. The Landlord denied any pressure was exerted and stated that the changes resulted from the Tenant's boyfriend moving into the rental unit and being added as a tenant to the tenancy agreement.

While it is often the case that the testimony of the parties will diverge, it is the Tenant who bears the burden of proving her claim on a balance of probabilities. In this case I find she has failed to meet that burden. I am persuaded by the amended residential tenancy agreement which corroborates the first had testimony of the Landlord who testified that the Tenant, her boyfriend and the Tenant's advocate were all part of the discussions to amend the agreement and each agreed to those changes. I accept the Landlord's testimony that the original agreement was based on one occupant and when

the Tenant asked to have her boyfriend added to the tenancy agreement the parties renegotiated the terms. I therefore dismiss the Tenant's request for compensation based on the increased rent and reduction in internet and laundry services.

Having been partially successful with her claim I award the Tenant recover of the \$100.00 filing fee.

Conclusion

The Tenant's application for return of double her security deposit and recovery of the filing fee is granted.

The Tenant's claim for compensation for an illegal rent increase as well as a reduction in services or facilities is dismissed.

The Tenant is granted a Monetary Order in the amount of **\$1,100.00** representing double her deposit and recover of the filing fee. The Tenant must serve a copy of the Order on the Landlords as soon as possible, and should the Landlords fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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 8, 2020

Residential Tenancy Branch