



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss; for the return of double their security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The female Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the service address noted on the Application, which is his residence, on January 23, 2011. The Tenant cited a Canada Post tracking number to corroborate this statement. I note that the Landlord submitted evidence to the Residential Tenancy Branch on January 24, 2011, which corroborates the testimony that these documents were served. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

The Landlord submitted evidence to the Residential Tenancy Branch on January 24, 2011 however it was not considered when rendering a decision in this matter, as the Tenants did not acknowledge receipt of the evidence and the Landlord submitted no evidence to establish that this evidence was served to the Tenants.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the return of double the security deposit paid in relation to this tenancy; to compensation for being served with Notice to End Tenancy pursuant to section 49 of the *Act*; and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The female Tenant stated that this tenancy began on August 28, 2010; that the parties entered into a written tenancy agreement, which was not submitted in evidence; that the Tenants were required to pay monthly rent of \$800.00 on the first day of each month; and that the Tenants paid a security deposit of \$400.00.

The female Tenant stated that on December 06, 2010 they received an email from the Landlord in which he advised them that he was serving them with a Two Month Notice to End Tenancy that was attached to the email. She stated that she was unable to open the attachment on her computer but she was able to open it on a friend's computer. She stated that the Two Month Notice to End Tenancy was dated January 06, 2010 and informed them that they must vacate the rental unit on January 05, 2011 as the Landlord intended to occupy the rental unit. She stated that she was not able to print the Notice to End Tenancy and the Landlord never served her with a hard copy of the Notice so she did not submit a copy of the Notice to End Tenancy as evidence.

The Tenant submitted a copy of the email from the Landlord, dated December 06, 2010, in which the Landlord declared that he wished to use the suite for his own purposes and that he had attached a RTB-32, which is a Two Month Notice to End Tenancy.

The female Tenant stated that she sent the Landlord an email on December 08, 2010 in which she advised the Landlord that the Notice to End Tenancy indicated that they must move by January 05, 2011 and in which she asked the Landlord to clarify the effective date of the Notice to End Tenancy. A copy of this email was submitted in evidence.

The female Tenant stated that the Landlord responded to her email of December 08, 2010 in which he advised her that he "Meant to say 6th Dec and 5th Feb". She stated that she interpreted this message to mean that the Landlord intended to date the Notice on December 06, 2010 and that the effective date of the Notice was February 05, 2011. A copy of this email was submitted in evidence.

The female Tenant stated that they vacated the rental unit on December 31, 2010 on the basis of the Notice to End Tenancy that had been emailed to them.

The female Tenant stated that they sent the Landlord an email on December 07, 2010 in which they advised the Landlord that they "will be gone Jan". The email does not declare the precise date that they intend to vacate the rental unit. The female Tenant stated that she intended this email to be notice that they would be vacating the rental unit on January 01, 2011. A copy of this email was submitted in evidence.

The female Tenant stated that they sent the Landlord an email on December 30, 2010 in which they advised the Landlord that they "will be leaving Friday 31st December". A copy of this email was submitted in evidence.

The female Tenant stated that they paid their rent for December of 2010; that they paid no rent for January of 2011; and that they have received no compensation pursuant to section 51(1) of the *Act*.

The female Tenant stated that they did not provide the Landlord with a forwarding address at the end of this tenancy and that they have still not provided the Landlord with their new address. She stated that she believes they sent the Landlord an email in

which they informed the Landlord that their security deposit could be mailed to the rental unit as they were having their mail forwarded by Canada Post. She cannot recall the date the email was sent and she did not submit a copy of that email as evidence.

In an email to the Tenants, dated January 23, 2011, the Landlord advised the Tenants that he has not yet received their forwarding address. This email was submitted in evidence by the Tenants.

In an email to the Landlord, dated December 30, 2010, the Tenants ask that their security deposit be refunded via bank transfer. This email was submitted in evidence by the Tenants. The Landlord sent an email to the Tenants, dated December 30, 2010, which appears to indicate that the Landlord intends to transfer the deposit once he has the keys to the rental unit. This email was submitted in evidence by the Tenants.

In the Application for Dispute Resolution the Tenants declared that their mail is being redirected from the rental unit; that they did not want to give their new address to the Landlord because their vehicle had been previously vandalized; and that the Landlord had informed them that he would wire money to his account.

Analysis

On the basis of the female Tenant's testimony and in the absence of evidence to the contrary, I find that this tenancy began on August 28, 2010; that the Tenants were required to pay monthly rent of \$800.00 on the first day of each month; and that the Tenants paid a security deposit of \$400.00.

Based on the female Tenant's testimony, the email evidence submitted by the Tenant, and the absence of evidence to the contrary, I find that the Landlord sent the Tenants a Two Month Notice to End Tenancy on December 06, 2010 and that this Notice to End Tenancy was served pursuant to section 49 of the *Act*. Given that the Tenant acknowledge receipt of this Notice via email, I find that the Notice to End Tenancy, was sufficiently served, pursuant to section 71(2)(c) of the *Act* on December 06, 2010.

Section 49(2) of the *Act* stipulates that a Notice to End Tenancy served pursuant to this section must have an effective date that is not earlier than two months after the date the tenant receives the Notice and the day before the day rent is payable under the tenancy agreement. As the Tenants received this Notice on December 06, 2010 and their rent is due on the first day of each month, I find that the earliest effective date of the Notice is March 01, 2011.

Section 53 of the *Act* stipulates, in part, that if a landlord gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of the Landlord's Two Month Notice to End Tenancy was March 01, 2011.

Based on the female Tenant's testimony, the email evidence submitted by the Tenant, and the absence of evidence to the contrary, I find that the Tenants vacated the rental unit on December 31, 2010 on the basis of the Notice to End Tenancy that was served to them pursuant to section 49 of the *Act*.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant received a Notice to End Tenancy pursuant to section 49 of the *Act* and they vacated the premises on the strength of that Notice, I find they are entitled to compensation in the amount of \$800.00, which is the equivalent of one month's rent.

Section 50(1)(a) of the *Act* stipulates, in part, that if a landlord gives a tenant notice to end a tenancy under section 49 of the *Act*, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice and paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice.

Although I accept that on December 07, 2010 the Tenants provided the Landlord with written notice, via email, of their intent to vacate the rental unit in January of 2011, I note that the Tenants do not declare what date in January they intended to vacate. Regardless of the Tenant's testimony that she meant the email to be notice that they would be vacating the unit by January 01, 2011, I find that the email that was sent does not serve as adequate written notice of their intent to vacate by that date, as it does not clearly state which day in January they will be vacating. I therefore find that this email did not serve to end this tenancy pursuant to section 50(1) of the *Act*.

I find that the email that was sent to the Landlord on December 30, 2010, in which the Tenants informed the Landlord that they will be leaving on December 31st does serve as written notice that the Tenants will be ending this tenancy pursuant to section 50(1) of the *Act*. As the written notice to end the tenancy pursuant to section 50(1) of the *Act* was given by the Tenants on December 30, 2010 and section 50(1) requires a tenant to give at least ten days' written notice, I find that the earliest effective date of this written notice was January 09, 2011.

Section 53 of the *Act* stipulates, in part, that if a tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of the written notice to end tenancy that was sent by the Tenant on December 30, 2010 was January 09, 2011.

Section 50(1)(b) of the *Act* stipulates, in part, that when a tenant gives notice to end a tenancy pursuant to section 50 of the *Act*, the tenant must pay the proportion of the rent due to the effective date of the tenant's notice. As the Tenants' written notice to end

this tenancy was effective January 09, 2011, I find that the Tenants must pay \$232.20 to the Landlord, which is the equivalent of nine days' rent.

I find that the Tenants are entitled to compensation under section 51, regardless of the fact that they vacated the rental unit early, as authorized by section 50(3) of the *Act*.

Based on the female Tenant's testimony, I find that the Tenants have not yet given the Landlord a forwarding address although they declare in their Application for Dispute Resolution that mail being sent to the rental unit is being redirected.

I find that I have insufficient evidence to conclude that the Tenants informed the Landlord, via email, that mail sent to the rental unit after the end of the tenancy would be redirected to them. In reaching this conclusion, I was influenced by the fact that the female Tenant was not absolutely certain that she sent this information to the Landlord via email and by the fact she could not recall when this email was sent. In reaching this conclusion, I was further influenced by the fact that the Tenants did not submit a copy of this email although they did submit many email communications exchanged between the parties, which causes me to suspect that this email may not exist. In reaching this conclusion, I was further influenced by the email sent by the Landlord on January 23, 2011 in which he informs the Tenants that he has not received a forwarding address for them.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord had not received a forwarding address in writing prior to being served with the Application for Dispute Resolution in which the Tenants declare their mail is being redirected from their old address.

I find that the Tenants application for the return of their security deposit has been premature, as the Application for Dispute Resolution was filed prior to them providing the Landlord with their forwarding address. On this basis, I dismiss the Tenants' application for the return of their security deposit.

Although the Tenants declared in their Application for Dispute Resolution that mail being sent to the rental unit is being redirected it is not entirely clear to me that this declaration should be interpreted as being their forwarding address. I find that the Landlord is not obliged to comply with section 38(1) of the *Act* until he receives written notice from the Tenants, in which they provide him with a forwarding address or in which they advise him that he can use the rental unit as a forwarding address.

Conclusion

I find that the Tenant has established a monetary claim of \$850.00, which is comprised of \$800.00 in compensation pursuant to section 51(1) of the *Act* and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

I find that this monetary claim must be reduced by the \$232.20 in rent that the Tenants owe from January of 2011. On the basis of these calculations I grant the Tenants a monetary Order in the amount of \$617.80. In the event that the Landlord does not voluntarily 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: February 17, 2011.

Residential Tenancy Branch