



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNSD MNR MNDC MND FF
 MNSD FF

Preliminary Issues

Upon review of each application for dispute resolution the Landlord advised she wished to withdraw her requests for an Order of Possession and requested an adjournment for her monetary claim. She advised that due to recent medical issues and unforeseen circumstances in losing her home all of her records are locked away in storage and are inaccessible until her possessions are delivered by the moving company. She stated that she had people help her to try and access the boxes with her records however they cannot get the boxes out of storage. She stated that she had sent a fax on Sunday December 11, 2011 to inform the *Residential Tenancy Branch* of this situation and provide some evidence and that she sent the Tenants some evidence via regular mail on December 9, 2011.

The Tenants advised they were not in agreement of this adjournment request and wished to proceed with today's hearing.

After careful consideration of the Landlord's request, I severed the two applications and granted an adjournment pertaining to Landlord's application for a Monetary Order, pursuant to #6.4 of the *Residential Tenancy Branch Rules of Procedure*. This hearing proceeded to hear the merits of the Tenant's application for dispute resolution.

In regards to the adjourned hearing the Landlord was ordered to ensure all of her evidence is received by the *Residential Tenancy Branch* and the Tenants no later than February 10, 2012. The Landlord must serve each party with the same evidence she wishes to rely upon.

The Tenants were ordered to ensure any additional evidence they wished to provide in response to the Landlord's application for dispute resolution is served upon all parties a minimum of five days prior to the hearing, not including the date sent or the date of the hearing.

Introduction

The Tenants filed seeking a Monetary Order for the return of double their security and pet deposits and to recover the cost of the filing fee from the Landlord.

The parties appeared at the teleconference hearing, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord confirmed receipt of the Tenants' hearing documents and evidence.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, and or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order pursuant to sections 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed they entered into a tenancy agreement beginning June 1, 2011 and the Tenants were allowed to occupy the rental unit as of approximately May 28, 2011. Rent was payable on the first of each month in the amount of \$1,050.00 and on May 24, 2011 the Tenants paid \$525.00 as the security deposit and \$250.00 as the pet deposit. The tenancy ended as of August 31, 2011 however the Tenants moved their possessions out prior to the end of the month.

The Tenants affirmed they personally served the Landlord with their forwarding address on August 30, 2011 when the female Tenant attended the Landlord's residence and the male Tenant stayed inside the car and took a picture as provided in their evidence. They also provided a picture of the document they served the Landlord listing their forwarding address.

The female Tenant confirmed she attended a move in inspection with the Landlord on May 28, 2011 and argued that the Landlord refused to attend a move out inspection on August 30, 2011 when they were available.

The Landlord affirmed that the Tenants refused to agree to a move out inspection time and that she issued them a final notice to attend. She denies meeting with the female Tenant on August 30, 2011 and claims she was at work then and the Tenant was actually speaking to her nanny. The Landlord stated her nanny is currently out of the

country and cannot provide testimony however she did tell the Landlord that the Tenants did not provide her with a forwarding address or the keys.

The Landlord confirmed she does not possess an order allowing her to keep the security and or pet deposits, she does not have the Tenants' written permission to keep the deposits, and she did not file an application for dispute resolution prior to her application filed on October 11, 2011.

In closing the Tenants stated again that they were at the rental unit August 30, 2011 which is when they requested to do the move out inspection when the Landlord refused, and when the female Tenant handed the Landlord the keys to the rental unit and their forwarding address.

Analysis

After the close of the hearing a copy of the Landlord's fax was placed on the file. I note that the fax was not sent December 11, 2011 as stated by the Landlord; rather it was faxed December 12, 2011 at 15:31 hrs.

I favor the evidence of the Tenants, who stated they attended the rental unit on August 30, 2011 to deliver their forwarding address, return the keys, and request the move out inspection, as supported by their documentary evidence. I favored this evidence over the evidence of the Landlord who stated she did not meet the female Tenant on August 30, 2011 and that the female Tenant spoke with her nanny that evening. I favored the evidence of the Tenants over the Landlord in part because the Tenants' evidence was forthright and credible.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's explanation that the female Tenant spoke with her nanny on August 30, 2011 and not the Landlord to be improbable given that the Landlord had provided

late evidence which included a text message she sent to the female Tenant on August 31, 2011 which stated "*When we met last night you were going to call me this morning to confirm our mtg for today at 3*"[sic]. In the presence of this evidence I find the Landlord's explanation that she simply did not meet with the Tenant and did not receive their forwarding address to be improbable. Rather, I find the Tenants' explanation that the Tenants attended the rental unit and took pictures of the female Tenant serving their forwarding address and returning the keys to the Landlord on August 30, 2011, to be plausible given the circumstances presented to me during the hearing and the evidence received from the Landlord after the hearing.

For all the aforementioned reasons, in accordance with section 44 of the Act, I find this tenancy ended August 30, 2011. I further find that the Landlord was personally served the Tenants' forwarding address, in writing, and the keys to the rental unit on August 30, 2011.

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 and pet 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 Tenants' security and pet deposits in full or file for dispute resolution no later than September 14, 2011. The Landlord has not returned the deposits and did not file her application for dispute resolution until October 11, 2011.

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 and pet deposit and the landlord must pay the tenant double the security and pet deposits.

Based on the aforementioned, I find that the Tenants have succeeded in meeting the burden of proof and I award them return of double their pet and security deposits plus interest in the amount of **\$1,550.00** (2 x \$525.00 + 2 x \$250.00 plus interest of \$0.00).

I find that the Tenants have succeeded with their application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$1,600.00** (\$1,550.00 + 50.00). This Order is legally binding and must be served upon the Landlord.

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: December 13, 2011.

Residential Tenancy Branch