



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord.

The Tenant gave affirmed testimony at the Hearing.

Preliminary Matters

The Tenant testified that she served the Landlord with the Notice of Hearing documents and copies of her documentary evidence on October 27, 2011, by registered mail to his the address that the Landlord provided on a 2 Month Notice to End Tenancy for Landlord's Use issued May 25, 2011, and provided to the Tenant by e-mail. The reason for ending the tenancy was that the Landlord had sold the rental unit effective June 24, 2011, and the purchaser requested vacant possession.

The Tenant testified that the documents were returned to her on December 7, 2011 marked "moved or unknown". The Tenant stated that she was in regular communication with the Landlord through e-mail and provided copies of e-mails between her and her Landlord in evidence. The Tenant testified that she also e-mailed the documents to the Landlord.

In an e-mail dated October 26, 2011, the Tenant wrote, "In order to serve documents legally it must be through registered mail. Please forward your address for this purpose." The Landlord replied on October 27, 2011, in part, "I do not care if they are legally sent to me or not. Scan them and send them to me, I will deal with them after I review them." The Landlord did not provide another address for service. On October 27, 2011, the Tenant wrote, in part, "This e-mail will be noted as evidence (sic) you are not willing to forward a different mailing address other than the one on the notice to end tenancy given by you and received by myself through e-mail on May 25th 2011."

Pursuant to the provisions of Section 71(2)(c) of the Act and based on the testimony and evidence provided by the Tenant, I am satisfied that the Landlord was sufficiently served with the Notice of Hearing documents and the Tenant's evidence by e-mail. I accept that the parties regularly communicated by e-mail as evidenced in the Tenant's

documents, and the fact that the Landlord served her with a 2 Month Notice to End Tenancy by way of e-mail. In October 27, 2011, the Landlord responded to the Tenant's e-mail requesting confirmation of his address for service by stating that he didn't care if they were legally sent to him or not.

The Landlord did not sign into the teleconference and the Hearing continued in his absence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on March 1, 2011, and ended on June 30, 2011. Monthly rent was \$1,450.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 on January 23, 2011.

The Tenant testified that she gave the Landlord written notification of her forwarding address on July 20, 2011, by registered mail to the address the Landlord gave on the Notice to End Tenancy. The Tenant testified that the documents were returned to her "unclaimed". She testified that she also e-mailed the Landlord her forwarding address on July 15, 2011 and that he responded to her e-mail the same day.

The Tenant stated that she did not agree that the Landlord could retain any of the security deposit. Neither the Landlord nor the new owner returned any of the security deposit to the Tenant.

The Tenant testified that she filed an Application for Dispute Resolution against the new owner of the rental unit, seeking return of the security deposit. She provided a copy of the Decision, dated October 19, 2011, with respect to that Application in evidence. The Tenant testified that the Dispute Resolution Officer found that the new owner was not the Tenant's landlord, and dismissed her application.

Analysis

Section 93 of the Act provides that the obligations of a landlord with respect to a security deposit run with the land or reversion.

In the Decision dated October 19, 2011, the Dispute Resolution Officer made the following statements:

“Section 93 of the Act as set out above applies in cases where a purchaser purchases a rented property from a vendor and the tenancy is maintained. In such a case, the purchaser becomes the landlord and therefore assumes the obligations of a landlord as set out under the Act. The key word in Section 93 is “landlord”. In this case there is no evidence that BLK ever received the deposit or that she was ever the tenant’s landlord. **The only landlord is BD and he is the person responsible for the return of the tenant’s deposit.**”

(emphasis added)

I cannot change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties. The Officer found that the Landlord is responsible for the return of the Tenant’s 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.

I find that the Tenant provided her forwarding address in writing, by registered mail, sent July 20, 2011. Service in this manner is deemed to be effected 5 days after mailing the document whether or not the recipient accepts delivery of the registered mail. Failure to claim registered mail does not allow a party to avoid service. Therefore, the Landlord is deemed to have received her forwarding address in writing on July 25, 2011. Furthermore, I find that the Landlord also received the Tenant’s forwarding address by e-mail on July 15, 2011.

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 security deposit, in the amount of **\$1,400.00**.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$1,400.00** 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: January 09, 2012.

Residential Tenancy Branch