



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC and MNSD

Introduction

This hearing was convened on the tenant's application for a Monetary Order for return of rent paid for a period following the end of the tenancy for frustration due to a fire. The tenant also seeks return of her security deposit.

Despite having been served with the Notice of Hearing in person to the building manager on February 3, 2012, no representative of the landlord called in to the number provided to enable their participation in the telephone conference call hearing which proceeded in their absence.

As a preliminary matter, I have amended the style of cause in this matter to add the words, "as agent for the landlord" to the named respondent, the building manager who is an employee of the landlord, as she would not appear to be individually liable for these claims.

By way of explanation, the tenant's advocates gave evidence that they have no other address for the landlord than that of the building manager. Their research has found that:

1. The rental building is owned by a numbered company, 316465 BC Ltd.;
2. Rent cheques are payable to Victoria Towers, the name of the rental building;
3. Documents pertaining to this and other claims are forwarded to Gateway Properties.

Issue(s) to be Decided

Is the tenant entitled to return of rent, and in what amount, and is the tenant entitled to return of her security deposit and should the amount be doubled?

Background and Evidence

This tenancy began on May 11, 2011 and ended on November 3, 2011 when the 92 unit rental building was badly damaged by fire and all residents were forced to evacuate. At the time of the hearing, the building remains unoccupied.

This tenancy is somewhat anomalous as there was no written rental agreement but the tenant appears to have been a tenant in common with her husband and a parent. Each pays rent separately of \$233.34 and the applicant tenant paid the security deposit of \$175 on May 1, 2012.

During the hearing, the tenant and her advocates gave evidence, supported by press clippings, that the rental building was rendered uninhabitable by a fire on the morning of November 3, 2011. Tenants were provided with emergency housing by a joint effort of the Red Cross and government agencies.

The advocates stated that, to their knowledge, the majority of tenants have had rent reimbursed, but a few have not.

They stated that the applicant tenant had provided the landlord's agent with her forwarding address in writing in early December of 2011 and she had promised to forward it along with other materials to the property management company.

The tenant now claims return of her rent paid for November 2011 and return of her security deposit in double.

Analysis

Section 92 of the Act provides that, "The *Frustrated Contract Act* and the doctrine of frustration of contract apply to tenancy agreements." Accordingly, I find that the rental

agreement between the applicant and the landlord ended as of February 2, 2012 as the rental unit was no longer habitable beyond that date.

Therefore, I find that the tenant is entitled to return of rent paid for the remaining 28 days of November ($\$233.34 \times 28/30 = \217.50).

As to the tenant's security deposit, the parties gave evidence that the security deposit of had been paid by the Employment and Income Assistance Branch on behalf of the tenant on May 1, 2011.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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 deposit(s).

I accept the uncontested evidence of the tenant that she provided the landlord's agent with her forwarding address in early December 2011 and that the deposit was not returned within 15 days and the landlord has not made application to make claim on it.

Therefore, find that the tenant is entitled to return of the security deposit in double.

Thus, I find that the tenant is entitled to a Monetary Order, calculated as follows:

Return of rent for 28 days of Nov. 2011 ($\$233.34 \times 28/30$)	\$217.50
To double security deposit per s. 38(6) of the <i>Act</i>	<u>175.00</u>
TOTAL	\$567.50

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$567.50** for service on 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: March 30, 2012.

Residential Tenancy Branch