



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act and to recover an overpayment of rent.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") on January 12, 2012 by registered mail to his residence and she provided a copy of her registered mail receipt as evidence of this. According to the Canada Post online tracking system, a notification card was delivered to the Landlord on January 13 and 19, 2012 respectively however the Landlord did not pick up the mail and it was returned to the Tenant. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up the mail). Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and if so, how much?
2. Is the Tenant entitled to recover an overpayment of rent?

Background and Evidence

This tenancy started on April 1, 2010 and ended on October 31, 2011 when the Tenant moved out. Rent was \$1,080.00 per month payable in advance on the 1st day of each month. The Tenant provided a copy of a receipt showing that she paid a security deposit of \$540.00 at the beginning of the tenancy. The rental unit is a suite on the upper level of a house. The Landlord resides on the main floor of the rental property.

The Tenant said on September 27, 2011, she hand-delivered a letter to the Landlord that contained her notice that she was ending the tenancy and which also included her forwarding address. The Tenant said she participated in a move out inspection at the end of the tenancy but the Landlord did not complete a condition inspection report. The

Tenant said the Landlord advised her that he was satisfied with the condition of the rental unit and would return her deposit. The Tenant said she contacted the Landlord by telephone a few weeks later because she had not received the security deposit back. The Tenant said the Landlord advised her on that occasion that he could not afford to pay it at that time but to check back with him from time to time. The Tenant said each time she contacted the Landlord (over a period of 2 months) he said he could not afford to pay back the security deposit.

The Tenant also said that in March 2011 she advised the Landlord that a guest would be staying with her for a month and the Landlord advised her that she would have to pay additional rent of \$360.00 for that month. The Tenant said she paid this amount to the Landlord because she believed she had no other choice.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on September 28, 2011 and that the tenancy ended on October 31, 2011. Consequently, ***the Landlord had until November 15, 2011 at the latest to return the Tenant's security deposit*** or to file an application for dispute resolution to make a claim against it. I find that the Landlord did not return the Tenant's security deposit of \$540.00, did not have the Tenant's written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the security deposit as required by s. 38(1) of the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$1,080.00 to the Tenant.

The Tenant also sought to recover an overpayment of rent for March 2011 in the amount of \$360.00. The Parties' tenancy agreement contains a term (#6) which required the Tenant to obtain the written consent of the Landlord to have a guest stay in the rental unit for more than 15 days. The tenancy agreement *does not* contain a provision for the payment of additional rent for guests or additional occupants. In the absence of such a term in the tenancy agreement, I find that the Landlord was not entitled to charge additional rent for March 2011 and therefore I also find that the Tenant's payment of \$360.00 for that month constituted an illegal rent increase that she is entitled to recover pursuant to s. 43(5) of the Act.

Conclusion

A Monetary Order in the amount of **\$1,440.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 14, 2012.

Residential Tenancy Branch