



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF / OPL, MNDC, FF

Introduction

This hearing concerned 2 applications: i) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the original amount of the security deposit / and recovery of the filing fee; ii) by the landlord for an order of possession / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

The tenant participated in the hearing and gave affirmed testimony.

Despite scheduling of the hearing in response to applications by both parties, and despite service of the tenant's application for dispute resolution and notice of hearing by way of registered mail, the landlord did not attend. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was "successfully delivered" to the landlord.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence before me, the month-to-month tenancy began on November 1, 2011. Monthly rent of \$925.00 is due and payable in advance on the first day of each month, and a security deposit of \$500.00 was collected. The tenant testified that a move-in condition inspection report was completed with the participation of both parties.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated March 15, 2012. A copy of the notice was submitted in evidence. The date shown on the notice

by when the tenant must vacate the unit is May 1, 2012, and the reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Subsequently, by letter to the landlord dated March 21, 2012, the tenant gave notice of her intent to end the tenancy by April 1, 2012. Thereafter, the tenant vacated the unit effective March 30, 2012, having paid rent in full for March 2012.

While the tenant proposed in her letter of March 21, 2012, as above, to schedule a move-out condition inspection with the landlord during the morning of April 1, 2012, the landlord declined to agree to schedule such an opportunity and there is no evidence that the landlord proposed an alternate time; in the result, a move-out condition inspection & report were not completed.

The tenant stated that, in view of the landlord's 2 month notice, she informed the landlord of her statutory entitlement to the equivalent of one month's rent payable under the tenancy agreement. However, the tenant claimed that the landlord appeared uninterested in that entitlement and was also apparently uninterested in returning the tenant's security deposit.

As to provision of her forwarding address, the tenant takes the position that this was provided to the landlord when the landlord received her application for dispute resolution by registered mail. Nevertheless, the tenant's security deposit has not thus far been returned.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**, and provides in part as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* 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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord issued a 2 month notice to end tenancy for landlord's use

of property dated March 15, 2012. I find that at that time the tenant had already paid rent in full for March 2012. Thereafter, I find that the tenant vacated the unit effective March 31, 2012, and that the landlord has not since paid the tenant the equivalent of one month's rent payable under the tenancy agreement. In the result, I find that the tenant has established entitlement to compensation in the amount of \$925.00.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. In part, this section provides 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 repay the original security deposit or make a claim against the security deposit by filing an application for dispute resolution.

I note that the landlord's application does not include an application to retain any or all of the tenant's security deposit, and that in the tenant's application she seeks the return of the original amount of her security deposit.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord was informed of the tenant's forwarding address when she received the tenant's application for dispute resolution by registered mail on April 17, 2012. I find that as the landlord has not yet repaid the tenant's security deposit, the tenant has established entitlement to compensation in the amount of her original security deposit applied for which is \$500.00.

As the tenant has succeeded with her application, I find that she has also established entitlement to the full recovery of the \$50.00 filing fee.

In view of the landlord's failure to attend the hearing which was scheduled in response to her application and which was also scheduled in response to the tenant's application, the landlord's application is hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,475.00**. Should it be necessary, this order may be served on the landlord, filed in the 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: June 6, 2012

Residential Tenancy Branch