



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to an application by the tenant's agent / power of attorney for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security and pet damage deposits / and recovery of the filing fee.

The tenant's agent / power of attorney attended and gave affirmed testimony. She was accompanied by a legal advocate. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the landlord did not appear. Evidence submitted by the tenant's agent / power of attorney includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "refused by recipient."

Issue(s) to be Decided

Whether the tenant's agent / power of attorney is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on August 1, 2011. Monthly rent of \$595.00 was due and payable "on or before the FIRST of each month." The tenant's agent / power of attorney testified that rent was paid each month by way of cheque and, further, that a security deposit of \$297.50 and a pet damage deposit of \$297.50 were both collected.

By date of April 30 and May 2, 2012, respectively, the tenant issued advance cheque payments of rent to the landlord. Each cheque was in the amount of \$3,300.00 (total: \$6,600.00). As a function of paying rent in advance, the tenant's agent / power of attorney testified that rent was reduced by \$45.00 to \$550.00 (\$595.00 - \$45.00).

In October 2012, personal health circumstances led to the tenant's hospitalization and eventual placement in supervised care.

By "notice to vacate" letter dated November 29, 2012, the tenant's agent / power of attorney informed the landlord that the tenant was required to vacate the unit as of October 12, 2012. In that letter the tenant's agent / power of attorney requested repayment of the security and pet damage deposits, and provided a forwarding address for that purpose. The letter was sent to the landlord by way of registered mail. Evidence submitted by the tenant's agent / power of attorney includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was "refused by recipient."

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

First, with regard to service of the hearing package, section 90 of the Act speaks to **When documents are considered to have been received**. Pursuant to this provision, a document "given or served by mail" is deemed to have been received "on the 5th day after it is mailed." I find that the landlord's refusal to take delivery of the hearing package sent by registered mail does not nullify the aforementioned statutory provisions. Accordingly, based on the documentary evidence and the affirmed / undisputed testimony of the tenant's agent / power of attorney, I find that the landlord has been properly served with the hearing package for the purposes of the Act.

As to notice to end tenancy, based on the documentary evidence and the affirmed / undisputed testimony of the tenant's agent / power of attorney, I find that the letter giving notice to end tenancy was mailed (accepted at the Post Office) on November 29, 2012. Accordingly, pursuant to section 90 of the Act, as above, the letter is deemed to have been received five (5) days later on December 4, 2012.

Section 45 of the Act addresses **Tenant's notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Following from all the above, I find that as the notice to end tenancy is deemed to have been received on December 4, 2012, tenancy ended effective January 31, 2013.

Prior to the tenant's issuance of cheques dated April 30 and May 2, 2012, I find that rent had been paid up to April 30, 2012. Following from this, I find that the tenant's cheques in the total amount of **\$6,600.00** reflect advance payment of rent beginning May 1, 2012. As I have found that tenancy ended January 31, 2013, rent due for the nine (9) month period from May 1, 2012 to January 31, 2013 is calculated to be **\$4,950.00** (9 x \$550.00). Accordingly, I find that the tenant's agent / power of attorney has established entitlement to reimbursement of an overpayment of **\$1,650.00** (\$6,600.00 - \$4,950.00).

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the deposits, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the deposits and must pay the tenant double the amount of the deposits.

As earlier noted, I find that the forwarding address was received by the landlord on December 4, 2012, and that tenancy ended January 31, 2013. As the landlord has neither repaid the security or pet damage deposits, nor filed an application for dispute resolution within 15 days after January 31, 2013, I find that the tenant's agent / power of attorney has established entitlement to the double return of the deposits in the total amount of **\$1,190.00** [(2 x \$297.50) + (2 x \$297.50)]

As the application has succeeded, I find that the tenant's agent / power of attorney has also established entitlement to recovery of the **\$50.00** filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant's agent / power of attorney in the amount of **\$2,890.00** (\$1,650.00 + \$1,190.00 + \$50.00). 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: April 11, 2013

Residential Tenancy Branch