



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing concerns the tenant's application for a monetary order reflecting the return of her security deposit in the original amount / and recovery of the filing fee. The tenant attended and gave affirmed testimony.

Despite service of the application for dispute resolution, the notice of hearing, and related documentary evidence (the "hearing package") by way of registered mail, the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered" on March 18, 2013.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this 6 month fixed term tenancy from September 1, 2012 to February 28, 2013. Monthly rent of \$1,280.00 was due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected.

By way of e-mail dated December 11, 2012, the tenant gave notice to end tenancy effective January 1, 2013. Thereafter, by way of text messages exchanged between the parties prior to January 15, 2013, it was agreed that the tenant's work address would be used by the landlord as the tenant's forwarding address. Subsequently, however, despite the tenant's requests, the landlord did not repay the tenant's security deposit. Thereafter, the tenant filed her application for dispute resolution on March 10, 2013. The tenant's residential address is shown on her application for dispute resolution.

During the hearing the tenant testified as to the reasons why she vacated the unit prior to the end of the fixed term of tenancy. Reasons included, but were not necessarily limited to, concerns about the conduct and behaviour of other residents and their guests in the building, and the persistent existence of rodents in her unit. The tenant testified that the landlord failed to adequately respond to her reports of these concerns.

The tenant testified that despite various concerns about the tenancy, she has not applied for compensation arising from alleged breaches of her right to quiet enjoyment. Rather, the tenant testified that she seeks to conclude the dispute as amicably as possible.

Additionally, the tenant confirmed that she has not applied for compensation reflecting the double return of her security deposit. This particular matter will be addressed further below.

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

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord has been served with the hearing package in compliance with section 89 of the Act, which speaks to **Special rules for certain documents**.

For reference, the attention of the parties is drawn to section 28 of the Act which addresses **Protection of tenant's right to quiet enjoyment**, and Residential Tenancy Policy Guideline # 6 which speaks to "Right to Quiet Enjoyment."

In regard to the security deposit, 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 security deposit, 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 security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, as earlier noted, the tenant testified that the parties agreed prior to January 15, 2013 that the tenant's work address would be used by the landlord as the tenant's forwarding address. However, the landlord neither repaid the

security deposit nor filed an application for dispute resolution within 15 days after January 15, 2013.

Further, as previously noted, the Canada Post website informs that the landlord took delivery of the tenant's hearing package on March 18, 2013. While the tenant's residential address is shown on the application for dispute resolution, the landlord neither repaid the security deposit nor filed an application for dispute resolution within 15 days after March 18, 2013, or at anytime thereafter.

Again, despite all of the above, the tenant has not applied for compensation reflecting the double return of the security deposit, and she testified that she seeks to conclude the dispute as amicably as possible.

There is no application before me from the landlord, and the landlord did not attend the hearing, although duly served. Based on the tenant's documentary evidence and affirmed / undisputed testimony, I find that tenancy effectively ended on or about January 1, 2013. I further find that the tenant requested repayment of her security deposit and provided the landlord with her forwarding address prior to January 15, 2013, and again on March 18, 2013. As the landlord has not thus far repaid the security deposit, the landlord is hereby **ORDERED** to do so. Additionally, the landlord is hereby **ORDERED** to reimburse the tenant's filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$650.00** (\$600.00 + \$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: June 05, 2013

Residential Tenancy Branch

