



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC / MNSD, FF
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Introduction

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

Both parties attended and gave affirmed testimony.

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

The unit which is the subject of this dispute is a house. Pursuant to a written tenancy agreement which was entered into on April 2, 2013, the tenancy was for a fixed term from May 15, 2013 to May 1, 2016. Monthly rent of \$3,700.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,850.00 was collected.

Subsequent to entering into the tenancy agreement, the tenant decided that she and her husband did not want to move into the house. By way of e-mail dated April 14, 2013, the tenant informed the landlord of her decision. The tenant claimed that this decision was made on the basis, in part, of the outcome of an inspection of the house which they arranged for others to undertake on their behalf. The landlord claims there was no discussion or agreement entered into with the tenant in regard to such an inspection; rather, the landlord claims that the tenant appeared to have inspected the unit with "an agent for foreign student housing and also a painter friend to give them a labour quote."

Reports submitted by the tenant were prepared by “JTC” (described as “active in the renovation and repair of buildings both in Ontario and British Columbia for over 30 years”) and “SG” (described as a “certified building systems operator – inspector”). While I note that the views set out in these reports include miscellaneous concerns about the house, there is no evidence of assessments undertaken by appropriately qualified and current local or provincial government officials.

After receiving the tenant’s e-mail about ending tenancy, the landlord undertook within a day or two to advertise for new renters. Thereafter, new renters were found effective from June 1, 2013; I note that the term of tenancy in the tenancy agreement with new renters is for a 4 month fixed term of June 1 to September 30, 2013. The agreement is silent on what occurs at the end of the fixed term.

As to return of the security deposit, in the tenant’s e-mail to the landlord of April 14, 2013, she writes in part:

We would like to request that our cheques for the first year, as well as the half month deposit, will be returned to us.

During the hearing the tenant testified that her address for the return of the security deposit and other cheques was clearly shown on the above cheques. Further, however, late evidence submitted by the tenant includes a letter dated April 17, 2013, which is shown as mailed to the landlord in care of the landlord’s legal counsel. In this letter the tenant requests that the security deposit be returned to her at a specific mailing address. It is understood that the address provided is the tenant’s work address. Subsequently, however, the security deposit was not repaid.

The tenant filed her application for dispute resolution on May 13, 2013, and the landlord’s application for dispute resolution was filed on July 19, 2013.

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

Below, the attention of the parties is drawn to particular sections of the Act and Guidelines.

Section 16 of the Act addresses **Start of rights and obligations under tenancy agreement**:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupied the rental unit.

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45 (2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 speaks to "Claims for Rent and Damages for Loss of Rent."

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Policy Guideline # 34 speaks to “Frustration,” and provides in part:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

Based on the documentary evidence and testimony, the aspects of the respective applications and my findings around each are set out below.

LANDLORD

\$1,850.00: *loss of rental income for the period May 15 to 31, 2013.*

While documentary evidence submitted by the tenant includes statements / assessments from two individuals she had asked to inspect the house, I find that the views provided therein are insufficient for me to find that the condition of the house fell short of the “health, safety and housing standards required by law.” In the result, I find the tenant has failed to meet the burden of proving that the tenancy was frustrated as a function of the alleged unsuitability of the house for habitation.

Further, I find that the tenant’s notice to end the fixed term tenancy by way of e-mail dated April 14, 2013, does not comply with the above related statutory provisions. I also find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion after receiving the tenant’s notice. As new renters were found effective June 1, 2013, I find that the end date of the subject tenancy is May 31, 2013. Accordingly, I find that the landlord has established entitlement to compensation for loss of rental income of \$1,850.00 for the period May 15 to 31, 2013.

While it is understood that previous renters were permitted to over-hold in the house beyond May 15, 2013, I find that this was the result of the landlord’s offer following the tenant’s decision to not take possession of the unit on May 15, 2013. In the absence of

any conclusive documentary evidence to the contrary, I am also satisfied on a balance of probabilities that the landlord recovered no rental compensation from the previous renters during the period May 15 to 31, 2013.

Entitlement: \$1,850.00

TENANT

\$3,700.00: *(2 x \$1,850.00) the double return of 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.

I find that the tenant's address appeared on the cheques issued to the landlord in April 2013 for payment of the security deposit, as well as rent for the first year. I also find that by way of letter to the landlord in care of her legal counsel by date of April 17, 2013, the tenant informed the landlord of her address for the purpose of repaying the security deposit.

Thereafter, the tenant's application and the notice of hearing (the "hearing package") were served by registered mail. Evidence includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered" to the office of the landlord's legal counsel on May 14, 2013. The tenant's new address appeared on her application for dispute resolution.

Following from the above, I find that the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing is, in the circumstances of this dispute, the day the tenancy ended on May 31, 2013.

Pursuant to the provisions of section 38 of the Act, the landlord had 15 days after the end of tenancy on May 31, 2013 to either repay the security deposit, or file an application for dispute resolution. As the landlord's application was made 49 days after May 31, 2013 on July 19, 2013, I find that the tenant has established entitlement to the double return of the security deposit.

\$100.00: *inspection report fees.*

The tenant testified that she paid two individuals \$50.00 each in exchange for their written assessments of the condition of the house. However, there are no receipts in evidence. Further, I find there is no evidence of an agreement between the parties concerning the completion of an inspection of the house on a fee-for-service basis. As well, and as previously noted, I find there is insufficient evidence that the condition of the house fails to comply with “health, safety and housing standards required by law,” such that it might be argued that the tenancy was frustrated. Accordingly, this aspect of the application is hereby dismissed.

Entitlement: \$3,700.00

Offsetting the two entitlements, I find there is a net amount owed to the tenant of **\$1,850.00** (\$3,700.00 - \$1,850.00). Accordingly, I grant the tenant a monetary order in that amount.

As both parties have achieved a measure of success with their claims, the respective applications to recover the filing fee are both 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 **\$1,850.00**. 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: August 12, 2013

Residential Tenancy Branch

