



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC

Introduction

This is the Tenant's application for compensation pursuant to the provisions of Sections 38 and 51 of the Act.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the male Landlord (SD) the Notice of Hearing documents and copies of her documentary evidence, by registered mail, on June 20, 2013. The Tenant provided copies of the registered mail receipt, tracking numbers and a Canada Post tracking search in evidence.

I described the documentary evidence that the Tenant had provided to the Residential Tenancy Branch and SD acknowledged that he had received all of the documents.

The Landlords did not provide documentary evidence to the Residential Tenancy Branch or to the Tenant.

Based on the evidence, I am satisfied that SD was served with the Notice of Hearing documents. However, the Tenant did not provide sufficient evidence that she served the female Landlord GD, and therefore her application against GD is dismissed. The matter proceeded against the Landlord SD only.

Issues to be Decided

- Is the Tenant entitled to a monetary award for double the security deposit pursuant to the provisions of Section 38(6) of the Act, less the amount of the security deposit returned on June 3, 2013?
- Is the Tenant entitled to a monetary award in the equivalent of one month's rent, in compensation for receiving a Notice to End Tenancy for Landlord's Use?

Background and Evidence

It is important to note that SD and I signed into the Hearing a few minutes before the Tenant signed in. There was a lot of static and traffic noise on SD's phone. I asked him if he was on a cell phone because of the noise and he advised he would pull over and take me off speaker phone. Throughout the Hearing, SD had to be reminded several times to not interrupt me.

The parties agreed on the following facts:

- This tenancy began on December 3, 2012, and ended on May 16, 2013.
- Monthly rent was \$1,100.00, due on the first day of each month.
- The Tenant paid a security deposit in the amount of \$540.00 at the beginning of the tenancy.
- The Tenant received a Two Month Notice to End Tenancy for Landlord's Use on April 5, 2013, effective June 30, 2013. The Landlords reason for ending the tenancy was, "All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit".

The Tenant gave the following testimony:

The Tenant did not dispute the Two Month Notice to End Tenancy, a copy of which was provided in evidence. On May 6, 2013, she gave the Landlords 10 day's written notice that she would be ending the tenancy early. Included in the Tenant's Notice was the Tenant's forwarding address. A copy of the Tenant's Notice was provided in evidence.

The Tenant paid the Landlords prorated rent for the month of May, 2013, in the amount of \$567.75.

The Tenant asked the Landlords for her compensation for being given notice to end the tenancy, but the Landlord has not given her any compensation.

The Landlords returned the Tenant's security deposit on June 3, 2013. The Tenant seeks compensation for late return of the security deposit.

The Landlord SD gave the following testimony:

The Landlords sought legal advice and were informed that the Tenant did not give proper documentation to end the tenancy and therefore she was not entitled to compensation under the Two Month Notice to End Tenancy.

SD submitted that the Tenant's Notice did not comply with the Act. He also submitted that his wife received the Tenant's Notice on May 6, 2013, but did not know the person who delivered it and therefore it wasn't proper Notice because she did not know it came from the Tenant.

I asked SD if his wife had read the Tenant's Notice, which clearly gives the rental unit address, and the name of the Tenant.

At this point, SD requested a new Hearing because he wasn't feeling well. SD disconnected from the teleconference. I advised the Tenant that we would wait a few minutes to see if SD signed back in.

SD signed back in, but appeared to be back on speaker phone. He stated that he was "cut off" and repeated that he was requesting a new Hearing. SD stated that I was "racially profiling" him and that he didn't feel that he was getting a fair hearing. SD exited the call again.

The Tenant gave the following testimony after SD exited the call:

The Tenant explained that she did not keep a photocopy of the Notice that she gave the Landlords on May 6, 2013, because she didn't think she would need it. She stated that the copy that was provided in evidence is a true copy, which was printed off from her computer. The Tenant stated that the Notice that was provided to the Landlords was signed by the Tenant and dated.

Analysis

Section 52 of the Act provides what must be included in a valid notice to end tenancy:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) **when given by a landlord**, be in the approved form.

(my emphasis added)

Section 50 of the Act states:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

I find that the letter that the Landlords received from the Tenant, dated May 6, 2013, is a valid notice to end the tenancy. I also find that the Tenant is entitled to compensation under the provisions of Section 51(1) of the Act, which is an amount equivalent to one month's rent, **\$1,100.00**.

A security deposit is held in a form of trust by the Landlords for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing (whichever is the latter of the two dates), a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I find that the Tenant provided the Landlords with written notification of her forwarding address on May 6, 2013, and that the tenancy ended on May 16, 2013. Therefore, the

Landlords had until May 31, 2013, to return the security deposit or to file an Application for Dispute Resolution claiming against it. The Landlords did neither.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit, less the amount that the Landlords returned on June 3, 2013:

$$(\$540.00 \times 2) - \$540.00 = \mathbf{\$540.00}$$

Conclusion

The Tenant's application against the Landlord GD is dismissed.

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,640.00** for service upon the Landlord SD. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 29, 2013

Residential Tenancy Branch

