



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and FF

Introduction

This hearing was convened on the tenant's application of May 20, 2013 seeking a monetary award for the one month rent provided for tenants who leave the tenancy on a two-month Notice to End Tenancy for landlord use. The tenant also sought to recover the cost of cable installation and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 64(3)(c) of the Act to permit the tenant to amend his application to include a request for return of his security deposit. The tenant had initially applied for return of the deposit but was advised to delete the request as it was made prematurely. However, the amount requested and the narrative in the application make it clear that the tenant intended to pursue return of the deposit.

Despite having been served with the Notice of Hearing sent by registered mail on May 30, 2013, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

Is the tenant entitled to the monetary compensation requested and in what amount?

Background and Evidence

This tenancy began on September 15, 2011 under a one-year fixed term agreement, defaulting to a month to month tenancy at its conclusion until the tenant vacated on May 15, 2013. Rent was \$1,900 per month and the landlord holds a security deposit of \$1,000 which, according to the tenant, has not been returned.

The tenant stated that there were written agreements for both the fixed term and month to month periods of the tenancy but the landlord had not provided him with copies as required by section 13(3) of the *Act*.

During the hearing, the tenant submitted into evidence copies of text messages in which the landlord requested an end to the tenancy as he wished to move back in to the rental property. However, there is no formal and enforceable two- month Notice to End Tenancy for landlord use.

The tenant was able to find new accommodation for May 15, 2013 but had declined to sign a Mutual Agreement to End Tenancy to that effect as the landlord would not give assurance that he would return the security deposit or compensate the tenant for the installation of cable for the downstairs suite as agreed.

Analysis

As noted, section 51 of the *Act* provides that tenants who receive a two month notice to end tenancy for landlord use are entitled to receive the equivalent of one month's free rent. However, in the absence of a formal and enforceable two-month Notice to End Tenancy for landlord use, I must find that the tenant voluntarily left the tenancy to accommodate the landlord's needs. Therefore, I find that the tenant cannot claim the one-month's free rent.

However, I find as fact that the landlord failed to return the security deposit or make application to claim against within the latter of 15 days of the end of the tenancy or receipt of the tenant's forwarding address.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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 deposits.

In the present matter I find that the tenant is entitled to return of the security deposit in double.

As to the tenant's claim for reimbursement for the installation of cable service, in the absence of a written agreement specifying that the landlord would reimburse the expenditure, I dismiss this claim as unproven.

As the application has partially succeeded on its merits, I find that the tenant is entitled to recover one-half of the filing fee for this proceeding from the landlord.

Thus, I find that the tenant is entitled to a Monetary Order for \$2,025 comprised of doubling of the \$1,000 security deposit one one-half of the \$50 filing fee.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$2,025.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

The claims for one-month's free rent and reimbursement for cable expenditures are dismissed without leave to reapply.

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: September 03, 2013

Residential Tenancy Branch

