



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD O FF

Preliminary Issues

The Tenant appeared at the teleconference hearing and requested that her granddaughter be able to speak on her behalf as her Agent. During the hearing the Agent provided all the testimony through direct communication with the Tenant.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 4, 2013, by the Tenant to obtain a Monetary Order for: the return of their security deposit; for other reasons which relate to compensation equal to one month's rent for being served a 2 Month Notice; and to recover the cost of the filing fee from the Landlords for this application.

The Agent affirmed that the Landlords were each served with copies of the Tenant's application for dispute resolution, Notice of dispute resolution hearing, and evidence, on November 6, 2013, by registered mail. Canada Post receipts were provided in the Agent's testimony. Based on the submissions of the Agent I find each Landlord is deemed served notice of this proceeding on November 11, 2013, five days after they were mailed, in accordance with section 90 of the Act and I proceeded in the absence for the Landlords.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Agent testified that the Tenant entered into a verbal tenancy agreement with the previous owners that commenced on August 1, 2009. Initially the Tenant was required to pay rent of \$1,000.00 on the first of each month and on or before August 1, 2009, the

Tenant paid \$1,000.00 as the security deposit. Rent was subsequently increased to \$1,150.00 per month. No move in or move out condition inspection report forms were ever completed.

The Agent submitted that on May 31, 2013, the Tenant was personally served a 2 Month Notice for landlord's use of the property that was effective August 1, 2013. The Tenant was able to secure another place so the Tenant's daughter contacted the Landlords and told them she would be out of the unit by July 2, 2013. The Agent did not know the exact date that the Landlords were informed but confirmed that the Tenant was out of the unit by July 2, 2013, and the keys were left for the Landlords with the concierge.

The Agent argued that the Tenant provided the Landlords with her forwarding address on July 31, 2013, when the Tenant's daughter called the Landlords and asked them to personally deliver the security deposit refund to the Tenant, who now resided in the same building, two floors above the rental unit where the Landlords were now residing. The Agent confirmed that the forwarding address was provided in writing on November 6, 2013, when they served the Landlords with a copy of their application. On August 8, 2013, the Landlord personally delivered a cheque for \$500.00 and a letter stating that they were keeping the other \$500.00 for damages caused to the unit.

The Agent testified that the Tenant did not cash the \$500.00 cheque and is now seeking return of double her deposit plus compensation equal to one month's rent for being served the 2 Month Notice.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and Agent, and corroborated by their documentary evidence.

Section 49(2) of the Act provides that a landlord may end a tenancy, if the landlord intends to reside in the unit, by giving notice to end the tenancy effective on a date that must not be earlier than 2 months after the date the tenant receives the notice; 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; and if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 51 (1) of the Act stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(1.1) of the Act provides that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Section 50(1) of the Act stipulates that 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. {My emphasis added}.

In this case the evidence supports the Tenant ended the tenancy early, prior to the effective date of the 2 Month Notice, by giving the Landlords verbal notice sometime in mid June, to end the tenancy effective July 2, 2013.

Based on the aforementioned, I find the Tenant did not provide proper written notice to end the tenancy prior to the effective date of the Notice. The Tenant remained in possession of the rental unit until July 2, 2013, and did not pay rent for July which was due on July 1, 2013. Therefore, I find the Tenant's compensation equal to one month's free rent is applied to the rent owing for July 2013, regardless of when the Landlords moved into the unit. Accordingly, I dismiss the Tenant's claim for compensation under section 51, equal to one month's rent, without leave to reapply.

The evidence supports the tenancy ended in July 2013, and the Tenant provided the Landlords with her forwarding address verbally on July 31, 2013 and in writing on November 6, 2013, which was deemed to be received on November 11, 2013, five days after it was mailed.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than November 26, 2013. The Landlords returned only a portion of the security deposit in the amount of \$500.00 on August 8, 2013, and did not file an application for dispute resolution.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double his security deposit plus interest in the amount of **\$2,000.00** (2 x \$1,000.00 + \$0.00 interest).

The Tenant has primarily succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$2,050.00** (\$2,000.00 + \$50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenant still possesses the cheque for \$500.00 dated August 8, 2013. It is likely that this cheque will be considered post dated; however, if the Tenant is able to cash that cheque then the Monetary Order will be reduced by the \$500.00,

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: February 20, 2014

Residential Tenancy Branch

