



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 2, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant submitted documentary evidence which indicates the Landlord was served with copies of the Tenant's application for dispute resolution and Notice of dispute resolution hearing, on December 2, 2013, by registered mail. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on December 7, 2013, five days after it was mailed, in accordance with section 90 of the Act; and I proceeded in absence of the Landlord.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The Tenant testified that she entered into a verbal tenancy agreement with the Landlord to rent the basement suite at the Landlord's house beginning November 29, 2013. She arranged to have her income assistance pay her rent directly to the Landlord. She picked up the security deposit cheque and signed the agreement to repay it to the Ministry. She personally delivered the security deposit cheque of \$275.00, made payable to the Landlord, on approximately November 22, 2013.

The Tenant stated that her first rent payment was sent directly to the Landlord on approximately November 24, 2013 and both the rent and security deposit cheques have been cashed by the Landlord. The Tenant stated that she had made arrangements to

meet with the Landlord on November 28, 2013, to pick up the keys to the rental unit but the Landlord was nowhere to be found. She continued to try to contact the Landlord and ended up having to change her moving truck because she could not get the keys.

In closing, the Tenant stated that this claim was only for the return of the \$550.00 rent payment because she was told by the Residential Tenancy Branch staff that she could not claim the security deposit until the Landlord was served with her application papers that had her forwarding address.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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 corroborated by her evidence.

I accept the parties entered into a verbal tenancy agreement that was set to begin on November 29, 2013, and the Landlord was paid \$275.00 as a security deposit plus \$550.00 as the first month's rent. I further accept that the Landlord did not provide the Tenant access to the rental unit as agreed upon and she kept the security deposit and rent that had been paid directly to her.

Based on the above, I find the Tenant has met the burden of proof to support her claim and I award her monetary compensation for the return of one month's rent that was prepaid and not returned, in the amount of **\$550.00**.

I also find that effective December 7, 2013, the Landlord is deemed to have been served with the Tenant's forwarding address. Therefore, the Tenant is at liberty to file another application to seek recovery of her \$275.00 security deposit.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$550.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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.

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: March 24, 2014

Residential Tenancy Branch

