



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Prestige Realty and Vancouver Rent It
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF, MNSD

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee. The tenant seeks a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The tenant states that she was not served with the landlord's notice of hearing package, but that she did receive an evidence package by Canada Post Registered Mail. The landlord states that his prior representative, J.H. sent the notice of hearing package by Canada Post Registered Mail on April 14, 2014, but is unable to provide any details of the service. The landlord has acknowledged receiving the tenant's notice of hearing package and the submitted documentary evidence. The landlord was unable to satisfy me that the tenant had been served the Notice of Hearing Documents in accordance with the Act and as a result, I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. As for the tenant's application, I am satisfied based upon the direct testimony of the landlord that the tenant's notice of hearing package was properly served upon the landlord. The hearing shall proceed on the tenant's application only.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on April 1, 2013 on a fixed term tenancy ending on March 31, 2014 as shown by the submitted copy of the signed tenancy agreement dated March 7, 2013.

The monthly rent was \$1,400.00 payable on the 1st of each month and a security deposit of \$700.00 was paid.

Both parties agreed that the tenancy ended on November 28, 2013 and that there was a \$700.00 security deposit paid by the tenant.

The tenant states that she provided her forwarding address in writing to the landlord in a written letter dated September 20, 2013 on the same date and then verbal notice later. The landlord disputes this stating that there is no record of a letter received dated September 20, 2013 of the tenant's forwarding address in writing. The tenant relies on a letter dated September 19, 2013 from the tenant's employer ending her employment contract on November 25, 2013 and states that immediately on September 20, 2013 that she sent the notice to vacate to her landlord. The tenant also references some emails from the landlord dated December 2, 2013 which she says is proof that the landlord was in receipt of the forwarding address in writing. The email states, "I haven't heard from you regarding a move out walk through and handing over the 2 keys, 2 fobs and 1 parking pass, and 1 postal key...Can you please call me at....I'm available tomorrow..." The landlord disputes this stating that the only email dated December 1, 2013 received from the tenant stating, "I am informing you that I/we have moved out of unit....as of November 30, 2013...This was all very sudden and out of my control, and could no longer continue on living at the residence as I know longer have a job or income.. Can we arrange a time to do a move-out walk through."

Analysis

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I find that the tenant is entitled to the unreturned portion of the \$700.00 security deposit of \$519.75 as both parties have confirmed that the landlord returned an uncontested portion of \$180.25 to the tenant.

I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlord was provided with her forwarding address in writing. The tenant relies on a letter dated September 20, 2013 giving notice to the landlord to vacate and to provide her forwarding address in writing. The landlord has disputed that any letter was received by the landlord. The tenant relies on an email to show service of the letter in that it refers to arranging a move-out walk through. The landlord has disputed the claim referring the emails provided by the tenant that the landlord did not have the tenant's forwarding address for return of the uncontested amount of \$180.25. The tenant has failed to provide sufficient evidence that there is a record of service of the letter dated September 20, 2013. The tenant's application for compensation under section 38 (6) of the Residential Tenancy Act has failed. This portion of the application is dismissed.

The tenant is entitled to recovery of the \$50.00 filing fee. I grant a monetary order for \$569.75. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$560.75.

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: May 08, 2014

Residential Tenancy Branch

