



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OLC, and O

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for “other”.

The Tenant stated that on May 09, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail, at the post box noted on documents accompanying the Application for Dispute Resolution. The Tenant submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit and to compensation related to a Two Month Notice to End Tenancy that was served to the Tenant?

Background and Evidence

The Tenant stated:

- that she entered into a tenancy agreement with the Landlord, in which she agreed to pay monthly rent of \$600.00
- that a security deposit of \$300.00 and a pet damage deposit of \$150.00 was paid
- that this tenancy ended on January 31, 2014
- that the tenant provided a forwarding address, in writing, on May 09, 2014 when she served the Application for Dispute Resolution, via registered mail
- that the Tenant did not authorize the Landlord to retain the security deposit
- that the Landlord did not return any portion of the security deposit

- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that this tenancy ended because the Landlord served her with a Two Month Notice to End Tenancy for Landlord's Use of Property, which had a declared effective date of January 31, 2014. The Tenant submitted a copy of this Notice, in which the Landlord declared that the tenancy was ending because the unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The Tenant stated that she still lives near the rental unit; that the Landlord has never moved into the rental unit and does not appear to be occupying it; and that there is a "for sale" sign at the property.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that this tenancy ended on January 31, 2014 and that the Tenant mailed her forwarding address to the Landlord on May 09, 2014.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit/pet damage deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit and pet damage deposit.

On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that the tenancy was ending because the unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Landlord is attempting to sell the rental unit, and that she does not appear to be occupying it.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after

the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. As I have found that the Landlord or a close family member of the Landlord has not taken reasonable steps to occupy the unit and/or has not occupied the rental unit for a period of at least six months, I find that the Landlord must pay the Tenant \$1,200.00, which is the equivalent of double the monthly rent.

Conclusion

The Tenant has established a monetary claim of \$2,100.00, which is comprised of double the security deposit and pet damage deposit (\$900.00) and double the monthly rent (\$1,200.00) and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: September 08, 2014

Residential Tenancy Branch

