



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord and the Tenant agree that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were personally served to the Landlord on July 05, 2014.

On September 24, 2014 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenant by registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 17, 2014 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were served to the Landlord by registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit and to compensation for being served with a Two Month Notice to End Tenancy?

Background and Evidence

The Landlord and the Tenant agree that the Tenant agreed to pay monthly rent of \$1,600.00 for this tenancy.

The Tenant stated that a security deposit and a pet damage deposit totaling \$1,600.00 were paid prior to the tenancy beginning on October 06, 2012. The Landlord stated that a security deposit of \$1,600.00 was paid prior to the tenancy beginning, although he is not certain of precisely when the tenancy began.

The Landlord stated that he served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, via text message, on April 11, 2014. The Notice to End Tenancy, which was submitted in evidence, declares that the Tenant must vacate the rental unit by May 31, 2014. The Tenant stated that this Notice to End Tenancy was received on April 14, 2014, via email.

The Landlord and the Tenant agree that sometime in early or middle April of 2014 the Tenant informed the Landlord, via text message, that the Tenant would move her property out of the rental unit by April 30, 2014 and that the rental unit would be cleaned and ready for inspection by May 09, 2014.

The Landlord and the Tenant agree that the Tenant had all of her property removed from the rental unit at the end of April of 2014 but that she spent several days cleaning the unit in May of 2014. The parties agree that the Tenant informed that the rental unit was cleaned and ready for inspection on May 09, 2014, at which time the unit was jointly inspected.

The Tenant stated that when the unit was inspected on May 09, 2014 she wrote her forwarding address on a piece of paper and handed it to the Landlord. The Landlord stated that the Tenant did not provide her with a forwarding address on May 09, 2014 and that he did not receive her forwarding address until he received the Application for Dispute Resolution on July 05, 2014.

The Tenant stated that after giving the Landlord her new address she became concerned for her safety and she contacted the police. She stated that she told the police she was concerned for her safety because she believed the Landlord had threatened her and he now had her new home address. She stated that she did not ask the Landlord to act on her concerns; she simply wished the incident reported in case of further problems. The Tenant submitted a redacted copy of a police report, dated May 09, 2014.

The Landlord and the Tenant agree that rent was paid for April of 2014; that rent was not paid for May of 2014; and that the Tenant was not given any compensation for being served with a Two Month Notice to End Tenancy.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain the security deposit/pet damage deposit; that the Landlord did not return any portion of those deposits; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposits.

Analysis

On the basis of the testimony of the parties, I find that on April 14, 2014 or April 11, 2014 the Tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property, served pursuant to section 49 of the *Residential Tenancy Act (Act)*, via some form of electronic communication. This Notice declared that the Tenant must vacate the rental unit by May 31, 2014.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* 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. As the Tenant did receive a notice to end a tenancy under section 49 of the *Act*, I find that the Tenant is entitled to compensation in the amount of \$1,600.00, which is the equivalent of one month's rent.

I find that the Tenants are entitled to compensation under section 51, regardless of the fact that they vacated the rental unit early, as is authorized by section 50(3) of the *Act*.

On the basis of the undisputed evidence, I find that although the Tenant removed all the personal property from the rental unit by the end of April of 2014, the Tenant spent time cleaning the rental unit in May of 2014 and informed the Landlord that the unit was ready for inspection on May 09, 2014. As the rental unit was not fully vacated until May 09, 2014, I find the Tenant was obligated to pay rent for the first nine days of May, at a per diem rate of \$51.61, which equates to \$464.49.

As no rent was paid for May of 2014, I find that the \$464.49 due for May must be deducted from the \$1,600.00 compensation that is due to the Tenant pursuant to section 51(1) of the *Act*, leaving compensation owing of \$1,135.51.

I favour the Tenant's testimony that she provided the Landlord with her forwarding address on May 09, 2014 over the Landlord's testimony that he did not receive her address on that date. I favoured the Tenant's evidence because it was corroborated by the police report submitted in evidence. Although the report is redacted, when read in its entirety it serves to corroborate the Tenant's version of events.

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 or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not yet repaid the security deposit/pet damage or

filed an Application for Dispute Resolution, and more than fifteen days have passed since the tenancy ended and the forwarding address was received.

I note that even if I concluded that the Landlord did not receive the forwarding address on May 09, 2014, I would still conclude that he has failed to comply with section 38(1) of the *Act*, as more than 15 days has passed since he acknowledged receiving the forwarding address on July 05, 2014.

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/or pet damage deposit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application,

Conclusion

The Tenant has established a monetary claim of \$4,385.51, which is comprised of double the security deposit/pet damage deposit (\$3,200.00), \$1,135.51 compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, 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: November 12, 2014

Residential Tenancy Branch

