



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 the Tenant's Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement, to recover the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on November 07, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were mailed to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

On November 19, 2014 the Landlord submitted documents/photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were placed under the Tenant's door on November 19, 2014. The Tenant stated that she received these documents on November 21, 2014 and they were accepted as evidence for these proceedings. The Tenant declined the opportunity to request an adjournment for the purposes of having more time to consider these documents.

On November 24, 2014 the Landlord submitted photographs to the Residential Tenancy Branch, some of which were simply better quality photographs than had been previously submitted and some of which were photographs that had not been provided to the Tenant. None of the photographs that have not been served to the Tenant have been accepted as evidence for these proceedings.

During the hearing both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

Is the Tenant is entitled to a refund of the security deposit?

Is the Tenant entitled to compensation pursuant to section 51(2) of the *Act because* 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?

Background and Evidence

The Tenant stated that this tenancy began on February 15, 2013. The Landlord stated that he is not certain when the tenancy began but the Tenant was living in the rental unit when he purchased the property on December 10, 2013.

The Landlord and the Tenant agree that the Tenant was required to pay rent of \$750.00 by the first day of each month and that a security deposit of \$375.00 was paid.

The Tenant stated that she vacated the rental unit on June 20, 2014 and the Landlord stated that she vacated the rental unit on June 26, 2014.

The Tenant submitted a receipt, dated June 20, 2014, which is signed by both parties. This receipt clearly indicates that the Tenant moved out of the rental unit on June 20, 2014. When the receipt was brought to the attention of the Landlord during the hearing, he stated that he must have miscalculated the rent refund for June and that the receipt was dated incorrectly.

The Landlord submitted a series of emails exchanged by the parties on June 10, 2014 and June 11, 2014, in which the parties agree to meet on June 25, 2014.

The Tenant stated that on June 20, 2014 she provided the Landlord with her forwarding address, in writing. The Landlord stated that he did not receive a forwarding address for the Tenant until she served him with the Application for Dispute Resolution.

The Landlord stated that on July 05, 2014 he returned the Tenant's security deposit of \$375.00, via email transfer. He contends that she agreed to the email transfer because she was going to be out of town and needed the money. He stated that the email transfer was not processed and was subsequently returned to his account. The Landlord submitted evidence of the email transfer, but no documentary evidence to show it was received.

The Tenant stated that she did not agree to the email transfer; she did not receive the email transfer; and she would not have known how to process the transfer if she had received it.

The Tenant and the Landlord agree that the Landlord served the Tenant with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which declared that she must vacate the rental unit by July 31, 2014. The Notice declared that the Landlord, the Landlord's spouse, a close family member of the Landlord, or a close family member of the Landlord's spouse intends to occupy the rental unit.

The Tenant stated that after she moved out of the rental unit she noticed a sale sign on the property.

The Landlord stated that nobody from his family moved into the rental unit; that he made repairs to the rental unit and then attempted to sell it; that he recently removed the rental unit from the market; and that he re-rented the unit on November 15, 2014.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was required to pay monthly rent of \$750.00 by the first day of each month and that a security deposit of \$375.00 was paid.

I favour the testimony of the Tenant, who stated that she vacated the rental unit on June 20, 2014 over the testimony of the Landlord, who stated that the Tenant vacated the rental unit on June 26, 2014.

In reaching this conclusion I was heavily influenced by the receipt, dated June 20, 2014, which was submitted in evidence, which clearly corroborates the Tenant's testimony. Although the Landlord stated that the receipt was dated in error and that the amount of rent refund due to the Tenant was miscalculated, I find the receipt to be the most reliable.

In reaching this conclusion I considered the emails exchanged by the parties on June 10, 2014 and June 11, 2014, in which the parties agreed to meet on June 25, 2014 for the purpose of inspecting the rental unit. I find these emails to be less compelling than the receipt of June 20, 2014, in part, because the parties could have subsequently amended the date of the inspection and, in part, because the rental unit may have been vacated prior to the date of the inspection.

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 testimony of the Landlord and the documentary evidence of the email transfer, I find that the Landlord sent the Tenant \$375.00, via email transfer, on July

05, 2014.

Even if I concluded that the Landlord had received a forwarding address for the Tenant, in writing, on June 20, 2014, I would conclude that the Landlord complied with section 38(1) of the *Act* when he sent this email transfer on July 05, 2014, as that is within fifteen days. Section 38(1) of the *Act* simply requires a landlord to repay the deposit within fifteen days; it does not require the landlord to ensure it was received within fifteen days.

Although I accept the repayment was not received by the Tenant, in the absence of any evidence that the repayment was not received as a result of bad faith on the part of the Landlord, I find that the Landlord made a reasonable effort to repay the deposit. I therefore find that the Landlord is not subject to the consequences of section 38(6) of the *Act*, although he remains obligated to return the security deposit of \$375.00.

In determining this matter I was influenced by the fact these parties clearly communicated by email and by the documentary evidence that shows the email transfer was sent to the Tenant's email address. While I accept that the Tenant may not have understood the email informing her of the email transfer, I find that she did receive the notification. In the event the Tenant did not understand how to process the email transfer, I find that she was obligated to advise the Landlord of her inability to process the payment.

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which declared that she must vacate the rental unit by July 31, 2014. The stated purpose of this Notice was that the Landlord, the Landlord's spouse, a close family member of the Landlord, or a close family member of the Landlord's spouse intended to occupy the rental unit.

On the basis of the undisputed I find that neither the Landlord nor a close family member of the Landlord moved into the rental unit; that the rental unit was placed on the retail market; and that after failing to sell the unit, the rental unit was re-rented for November 15, 2014.

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 move into the rental 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 \$1,500.00, which is the equivalent of double the monthly rent.

I find that the Tenant's application has merit and that she is entitled to recover the cost

of filing this Application for Dispute Resolution from the Landlord.

Conclusion

The Tenant has established a monetary claim of \$1,925.00, which is comprised of a security deposit refund of \$375.00, \$1,500.00 for compensation pursuant to section 51(2)(a) of the *Act*; and \$50.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$1,925.00. 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 the 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: December 01, 2014

Residential Tenancy Branch

