



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Preliminary Issues

Upon review of the application for Dispute Resolution the Agent affirmed that he was the Tenant's fiancé and that he was attending the hearing as the Tenant's agent. As the Agent was not listed as a Tenant on the tenancy agreement, the style of cause for any monetary awards will be amended to remove his name and include only the Tenant's name, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant and her Agent on July 29, 2014, to obtain a Monetary Order for: the return of double the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Agent who gave affirmed testimony. The Tenant provided documentary evidence that the Landlord was served notice of this application and this hearing by registered mail on August 7, 2014, to the service address provided by the Landlord and written on the tenancy agreement. Canada Post tracking information confirms that Canada Post attempted delivery of the package on August 8, 2014 and that a notice card was left that date to advise the Landlord they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on August 13, 2014 that the registered mail was available for pick up.

As of August 27, 2014 the Canada Post tracking information confirms that the Landlord still did not pick up the registered mail. Based on this information, I find that the Landlord was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of the Landlord to avoid service. Common law provides that refusal to accept or pick up registered mail does not avoid service. Accordingly, I find the Landlord was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*, and I proceeded in the Landlord's absence.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The undisputed evidence was that on June 15, 2014, the Tenant F.L., entered into a written one year fixed term tenancy that was set to begin on August 1, 2014. Rent of \$1,350.00 was to be paid on the first of each month and on June 15, 2014 the Tenant paid \$675.00 as the security deposit.

The Agent submitted that shortly after signing the tenancy agreement they advised the Landlord that they would not be moving into the rental unit and requested permission to sublet the unit. The Landlord denied the Tenant's request to sublet so they agreed to assist the Landlord in finding a new tenant for August 1, 2014. The Agent stated that they advertised the rental unit and found a number of good tenants with good references who agreed to pay \$50.00 more per month than what rent was to be for their tenancy.

The Agent stated that a few days after finding new tenants the Landlord told them that his girlfriend needed more time to find another place so she was going to continue to occupy the rental unit until August 15, 2014. The Agent said that the Landlord signed a tenancy agreement with the new tenants they found for him on about July 3, 2014 for \$1,400.00 rent effective August 15, 2014. The Agent said the Landlord told the Tenant that he was going to keep their security deposit to cover the first half month's rent, even though his girlfriend remained in possession of the house for the first two weeks of August 2014.

The Tenant provided documentary evidence which included, among other things, copies of: the tenancy agreement; payment receipt for the security deposit; and a letter they sent to the Landlord by registered mail on July 10, 2014, which included their written notice, their request for the return of their security deposit, and provided the Landlord with their forwarding address. A copy of the July 10, 2014 envelope was provided in their documentary evidence showing that it was returned to the Tenant as it was unclaimed by the Landlord. The Tenant now seeks the return of double their security deposit.

Analysis

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 Agent and corroborated by their documentary evidence.

Section 44(1)(d) of the Act stipulates that a tenancy ends when the tenant vacates or abandons the rental unit; whichever is the earlier of the two.

In this case the effective date of the Tenant's notice was prior to the start of the tenancy, and the Tenant never took possession of the rental unit. Rather, the Tenant found another tenant to occupy the rental unit effective on August 1, 2014; however, it was the Landlord who delayed the start date until August 15, 2014. Therefore, I find this tenancy ended on or before July 31, 2014, pursuant to section 44(1)(d) of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The Tenant provided documentary evidence that the Landlord was served their forwarding address in writing by registered mail on July 10, 2014, to the service address provided by the Landlord and written on the tenancy agreement. Canada Post tracking information confirms that Canada Post attempted delivery of the package on July 11, 2014 and that a notice card was left that date to advise the Landlord they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on July 16, 2014 that the registered mail was available for pick up.

As of July 27, 2014 the Canada Post tracking information confirms that the Landlord still did not pick up the registered mail and it was returned to the Tenant unclaimed. Based on this information, I find that the Landlord was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of the Landlord to avoid service. Common law provides that refusal to accept or pick up registered mail does not avoid service. Accordingly, I find the Landlord was sufficiently served with the Tenant's forwarding address on July 15, 2014, five days after it was mailed, pursuant to sections 71 and 90 of the *Act*.

As noted above, this tenancy ended July 31, 2014, and the Landlord was served with the Tenant's forwarding address on July 15, 2014. Therefore, the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 30, 2014. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenant has succeeded in proving the merits of their claim, and I award them double their security deposit plus interest in the amount of **\$1,350.00** (2 x \$675.00 + \$0.00 interest).

I find that the Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order for **\$1,400.00** (\$1,350.00 + \$50.00). 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: February 23, 2015

Residential Tenancy Branch

