Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on October 15, 2014. The Tenant applied for: the return of her security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary and digital evidence in advance of the hearing. There was no appearance for the Landlord during the 34 minute duration of the hearing and no submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents by the Tenant for this hearing.

The Tenant testified that she served the Landlord with the Application, the Notice of Hearing documents, and her evidence on October 20, 2014 by registered mail. The Tenant provided the Canada Post tracking report to corroborate this method of service.

The Tenant testified that the documents and evidence were sent to the Landlord's service address which was detailed on the written tenancy agreement as well as on the notice to end tenancy which was served to the Tenant during the tenancy. The Tenant explained that the documents were returned to her as unclaimed by the Landlord.

Section 90(a) of the Act explains that a document served by mail is deemed to have been received five days after it is mailed. Furthermore, a refusal or neglect to accept registered mail is not a ground for review under the Act. Therefore, I find that the required documents were served to the Landlord by the Tenant pursuant to Section 89(1) (c) of the Act. As a result, the hearing continued in the absence of the Landlord and the Tenant's undisputed testimony and written evidence were carefully considered in this decision.

Issue(s) to be Decided

- Is the Tenant entitled to the return of double the amount of the security deposit?
- Is the Tenant entitled to monetary compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant testified that this tenancy started on December 1, 2010 for a fixed term of one year which then continued on a month to month basis. Rent under the written tenancy agreement was $1,000.00 payable on the first day of each month. The Tenant paid the Landlord a $500.00 security deposit on November 9, 2010 which the Landlord still retains.

The Tenant provided the Landlord with postdated rent cheques during the tenancy. The Tenant testified that the Landlord provided her with three key fobs for the building and charged her a $10.00 deposit for each one totaling $30.00. The Tenant also testified that she paid the Landlord $30.00 each month for a car parking space in the building.

The Tenant stated that on October 1, 2012, she failed to pay rent to the Landlord. As a result, she was served by the Landlord with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”). The Notice was provided into evidence and shows a vacancy date of October 15, 2015 due to $1,000.00 in unpaid rent.

The Tenant testified that she had been provided with a letter by the Landlord on September 26, 2010 which informed her that the parking space was being revoked. However, at this time, the Tenant had already issued the Landlord with postdated cheques for November and December, 2012 in the amount of $1,030.00 each.

The Tenant explained that she decided that she would accept the Notice and move out in accordance with the vacancy date of October 15, 2012. The Tenant forgot to cancel the postdated cheque and as a result, the Landlord cashed the November 2012 rent cheque for $1,030.00. The Tenant submitted that this was maliciously done by the Landlord and this created financial hardship to the Tenant for the holiday period. The Tenant cancelled the December 2012 rent cheque.

The Tenant stated that the Landlord failed to contact her to complete a move out inspection report. When the Tenant was asked whether she had informed the Landlord that she was going to be moving out in accordance with the Notice, the Tenant stated that she didn’t think she had communicated this to the Landlord.

The Tenant testified that she returned the three building key fobs back to the Landlord in the mail in the middle of December 2012. The Tenant testified that on December 12, 2015, she wrote the Landlord a letter detailing her frustration that the Landlord had cashed the November 2012 rent cheque and that she wanted this money back along with her security deposit. The Tenant provided a copy of this letter into written evidence as well as a digital video recording showing the letter being placed into the mail box assigned as "DEPOSITED RENT CHEQUES" at the Landlord's business address. The letter shows the Tenant's forwarding address.

However, the Tenant has not received her security deposit back and as a result the Tenant claims double the amount back of $1,000.00 in accordance with the Act. The Tenant claims that because the Landlord cashed her November 2012 rent cheque which he should not have done, the Landlord should owe her double the amount back for $2,060.00.

The Tenant testified the Landlord advertised the rental unit with wireless internet service which was to be included in the rent. However, during the last four months of the tenancy the internet service did not work properly and as a result, the Tenant now claims $10.00 for each month that she did not have internet service. The Tenant did not provide a copy of the tenancy agreement into written evidence. Therefore, I asked the Tenant to explain whether the tenancy agreement stipulated that internet service was included in her rent. The Tenant examined the tenancy agreement during the hearing and acknowledged that the agreement stated that internet was not included in the rent but it was being provided as an extra service that could be taken away at any time.

The Tenant makes a total claim of $3,250.00 which includes the filing fee. The Tenant also wanted to levy administrative penalties on the Landlord for failing to complete a move out inspection report, failing to return her security deposit, cashing her November 2012 rent cheque, and refusing to provide the correct legal name of the Landlord's agent. The Tenant was informed during the hearing that in order to levy administrative penalties, a party must apply to the Director of the Residential Tenancy Branch. The Tenant may contact the Information Line for more information on this matter.

Analysis

The Landlord issued the Tenant with the Notice that had a vacancy date of October 15, 2012. The Tenant moved out of the rental suite on this date and therefore, I find that the tenancy ended on October 15, 2012. The Tenant made her Application on October 15, 2014. As a result, I find the Tenant made her Application within the two year time period stipulated by the Section 60(1) of the Act.

Based on the undisputed testimony and documentary evidence provided for this hearing, I make the following findings on the balance of probabilities. Section 38(1) of the Act explains that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

I accept the Tenant's oral testimony along with the documentary and digital evidence that she served the Landlord with her forwarding address in writing. I accept that this was done by placing it in the mail box on December 12, 2012 where the Landlord carried out business for the purposes of collecting rent cheques. Therefore, I find the Tenant served this document in accordance with Section 88(f) of the Act.

Section 90(d) of the Act provides that a document served by leaving a copy of it in the mail box or mail slot is deemed to have been received three days later. Therefore, I find the Landlord is deemed to have received the Tenant's forwarding address in writing on December 15, 2012. As a result, the Landlord was required to act in accordance with the return of the security deposit provisions of the Act by the end of December 2012. However, there is no evidence before me that the Landlord made an Application to retain the Tenant's security deposit or returned it back to the Tenant by the required time limit.

Section 38(6) of the Act explains that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Therefore, the Tenant is entitled to the return of double the amount of the security deposit in the amount of $1,000.00.

In relation to the Tenant's claim for inadequate internet service for the last four months of her tenancy, I deny this portion of her monetary claim. This is because, by the Tenant's own admission, the internet service provided in the building was not included as part of the tenancy and this was clearly stipulated in the written tenancy agreement which the Tenant signed when the contract was entered into.

In relation to the Tenant's claim for the return of her November 2012 rent cheque, I find that the Tenant failed to provide sufficient evidence that the Landlord was informed the rental unit was going to be vacated by her on October 15, 2012 in accordance with the Notice. The Tenant admitted that she had not paid rent for October 2012. Therefore, the Landlord correctly used the Notice to remedy the Tenant's breach of the Act for not paying rent. If a Tenant chooses not to pay the outstanding rent after being served with a Notice and vacates the rental unit on the vacancy date of the Notice, this does not absolve them from paying rent for the remainder of the month; this is because the

Landlord would not have been in a position to re-rent it for the remainder of October 2012. Therefore, I find that the Tenant is still liable for October 2012 unpaid rent.

Usual accounting practices dictate that any payment received by a party is to be applied to the initial debt first. Therefore, I find that because the Tenant failed to inform the Landlord that she had vacated the rental suite and the Landlord subsequently cashed the Tenant's rent cheque for November 2012, the Landlord will be considered to have applied the November 2012 rent monies to the outstanding debt for October 2012.

As a result, I am unable to award the Tenant the monetary claim of $2,060 which she claims in this respect. However, I also find that the Landlord is precluded from claiming for unpaid rent for October 2012 as this would have been fully satisfied by the November 2012 rent cheque that was cashed, minus the $30.00 for the car parking space.

In relation to the return of $30.00 for the car parking space that the Tenant did not have access to for the last month of her tenancy, I accept the undisputed evidence of the Tenant that the parking space for this tenancy was inherently linked to the tenancy and that the Tenant was paying to the Landlord $30.00 each month for a car parking space. I also accept the Tenant's undisputed evidence that the Tenant terminated the car parking space at the end of September 2012. Therefore, as the Tenant did not have access to her car parking space for the period of October 2012 and the Landlord had cashed the Tenant's rent cheque for November 2012 which included $30.00 for the car parking space, the Tenant is entitled to the return of this amount.

In relation to the Tenant's claim for the return of her key fob deposits in the amount of $30.00, I find the following. Section 37(2) requires that when a tenant vacates the rental unit they must give the landlord all the keys they are in possession or control of that gives them access to the property. The Tenant testified that she returned the keys in the mail to the Landlord in the middle of December 2012. I find that this was a significant delay in returning the keys to the Landlord when the tenancy ended on October 15, 2015. Furthermore, the Tenant failed to provide sufficient evidence that the keys were in fact returned to the Landlord by mail. Therefore, I find that the Tenant is not entitled to the return of the $30.00 for the key fobs.

As the Tenant has been partially successful in her monetary claim, I also award the Tenant the **$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenant is granted a total Monetary Order in the amount of **$1,080.00** ($1,000.00 + $30.00 + $50.00). This order must be served on the Landlord and may then be filed in the British Columbia Small Claims Court and enforced as an order of that court if the Landlord fails

to make payment. Copies of this order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord has breached the Act by not dealing with the Tenant's security deposit as required by the Act and not returning monies owed for not having a car parking space. Therefore, the Tenant is issued with a Monetary Order for $1,080.00

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 27, 2015

Residential Tenancy Branch