



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Terreton Title Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the landlord had returned to the tenant \$1,000.00, which was the base amount of her security deposit. I therefore consider the tenant's claim to have been amended to claim just the penalty of \$1,000.00.

Issues to be Decided

Is the tenant entitled to double her security deposit less what has been returned?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on September 1, 2013 and was set to run for a fixed term ending on September 1, 2015. At the outset of the tenancy, the tenant paid a \$1,000.00 security deposit. On or about July 16, 2014, the tenant gave the landlord notice that she would be vacating the rental unit on or before October 1, 2014 and provided her forwarding address in that letter. The tenant vacated the unit on September 30, 2014. On October 15, the landlord returned to the tenant her \$1,000.00 security deposit, but that cheque was returned by the bank for insufficient funds. The landlord later gave the tenant a cheque in February 2015 which she successfully negotiated.

The landlord testified that because he does not live in British Columbia, he hired an agent to show the rental unit. The agent charged the landlord fees for each showing and upon securing a new tenant, charged the landlord a commission from each month's rent. The landlord seeks to recover these fees from the tenant as well as the cost of his

flight from Alberta to British Columbia to meet the new occupant and attend to signing the tenancy agreement.

The landlord provided evidence showing that the new occupant of the rental unit is paying \$50.00 per month less than what the tenant would have paid throughout the balance of the fixed term and seeks to recover \$550.00 which represents the \$50.00 shortfall for each of 11 months.

Both parties seek to recover their filing fee from the other.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit.

Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenant paid a \$1,000.00 security deposit and vacated the rental unit on September 30, 2014 and that the landlord received the forwarding address in writing on July 16, 2014. Although the landlord provided the tenant with a cheque for the security deposit within 15 days of the end of the tenancy, that cheque could not be successfully negotiated and I therefore find that the landlord failed to comply with section 38(1) and is now liable to pay the tenant double the security deposit. As the landlord has already returned the base amount of the deposit, I award the tenant \$1,000.00 which represents the penalty portion.

I find that the tenant was not entitled to end the fixed term tenancy early. Section 53 of the Act provides that when a tenant gives the landlord a notice to end the tenancy before the earliest date on which they are entitled to end the tenancy, the effective date of the notice is automatically changed to comply with the earliest date the tenancy can be legally ended. I find that section 53 of the Act operated to change the effective date of the tenant's notice to September 1, 2015.

Section 7 of the Act provides that where a party breaches the Act, the non-complying party must compensate the other party for any losses that result, subject to the other party's reasonable efforts to mitigate their losses. The landlord acted promptly and reasonably to minimize his loss of rental income and was able to secure a new tenant for October 1, but at a lower rental rate than what the tenant was paying. I find that the

tenant is obligated to compensate the landlord for the loss in rental income he suffered through the balance of the tenancy and I award the landlord \$550.00.

The landlord chose to live in a different province than where the rental unit is situated and therefore was unable to attend to showing and managing his business. I find that the tenant should not be held responsible for the landlord's choice to place himself in this situation and therefore I dismiss the claim for the fees charged by the agent and the airfare to bring the landlord to the rental unit.

As both parties have enjoyed success, I find they should each bear the cost of their respective filing fees.

Conclusion

The tenant has been awarded \$1,000.00 and the landlord has been awarded \$550.00. Setting off these awards as against each other leaves a balance of \$450.00 owing by the landlord to the tenant. I grant the tenant a monetary order for \$450.00. This order may be filed in the Small Claims Division of the Provincial 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: June 25, 2015

Residential Tenancy Branch

