



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to cross applications.

On October 31, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On November 04, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; to cancel a Notice to End Tenancy; and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Tenant withdrew the application to cancel a Notice to End Tenancy, as the rental unit has been vacated.

The female Tenant stated that on November 06, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via express post which requires a signature. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)* and the hearing proceeded in the absence of the Landlord.

On May 15, 2015 the Tenant submitted 10 pages of evidence to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The female Tenant stated that these documents were served to the Landlord by express post on May 15, 2015. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

Preliminary Matter #1

Although the Tenant makes reference to a Monetary Order Worksheet in the Application for Dispute Resolution, a copy of that document was not submitted as evidence. The female Tenant stated that the monetary claim for \$1,060.00 included \$775.00 in compensation for being served with a Two Month Notice to End Tenancy and a security deposit refund of \$357.50. When the Tenant was advised that her claims exceed the claim for \$1,060.00 she replied that she made a mathematical error.

I find that the Landlord knew, or should have known, that the Tenant was seeking \$775.00 in compensation for being served with a Two Month Notice to End Tenancy and a security deposit refund of \$357.50, as that is clearly explained on the Application for Dispute Resolution. I therefore find it reasonable to consider those two claims.

Preliminary Matter #2

The Tenant has also claimed compensation for loss of quiet enjoyment of the rental unit, however the Tenant does not specify how much the Tenant is seeking for loss of quiet enjoyment of the rental unit.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Tenant's Application for Dispute Resolution does not provide full details of the claim for loss of quiet enjoyment, as it does not declare the amount the Tenant is seeking for the loss of quiet enjoyment of the rental unit. As the Tenant has not declared an amount, I decline to consider the application for compensation for loss of quiet enjoyment of the rental unit.

Preliminary Matter #3

As the Landlord did not attend the hearing, I find that the Landlord failed to diligently pursue the Landlord's Application for Dispute Resolution. I therefore dismiss the Landlord's Application for Dispute Resolution, without leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

The female Tenant stated that:

- this tenancy began on May 29, 2014;
- the Tenant paid a security deposit of \$387.50;

- the Tenant authorized the Landlord to retain \$30.00 of the security deposit in exchange for property purchased from the Landlord;
- on September 29, 2014 the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that the Tenant must vacate the rental unit by November 30, 2014;
- on October 01, 2014 the Tenant gave the Landlord written notice of their intent to vacate the rental unit by October 15, 2014;
- the Tenant vacated the rental unit on October 11, 2014;
- the Tenant paid \$387.50 in rent for October of 2014;
- the tenant provided a forwarding address, vis email, on October 11, 2014;and
- the Landlord did not return the remaining \$357.50 of the security deposit.

The female Tenant stated that the Landlord did not compensate the Tenant for being required to vacate the rental unit.

Analysis

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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. On the basis of the undisputed evidence, I find that the Tenant received a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*. I therefore find that the Tenant is entitled to compensation in the amount of \$775.00, which is the equivalent of one month's rent.

On the basis of the undisputed evidence, I find that on October 01, 2014 the Tenant gave the Landlord written notice of the Tenant's intent to vacate the rental unit on October 15, 2014. As the Tenant had the right to end the tenancy with ten days written notice, pursuant to section 50(1) of the *Act*, I find that this tenancy ended on October 15, 2014.

I find, pursuant to section 50(3) of the *Act*, that the Tenant is entitled to compensation under section 51 of the *Act*, regardless of the fact that the Tenant vacated the rental unit prior to the effective date of the Two Month Notice to End Tenancy.

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 did not repay the security deposit or file an Application for Dispute Resolution until more than 15 days has passed after tenancy ended and the forwarding address was received. This decision was based on the undisputed evidence that the Tenant provided a forwarding address, in writing, on October 11, 2014; my determination that the tenancy ended on October 15, 2014; and

the evidence that shows the Landlord did not file an Application for Dispute Resolution until October 31, 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.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover fee paid to file the Tenant's Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,570.00, which is comprised of double the security deposit of \$387.50, less the \$30.00 the Tenant authorized the Landlord to retain for a purchase; \$775.00 in compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property; and \$50.00 for the fee paid to file an Application for Dispute Resolution.

I grant the Tenant a monetary Order for \$1,570.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, 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: June 04, 2015

Residential Tenancy Branch

