



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction

On November 27, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

This Application for Dispute Resolution was the subject of a dispute resolution hearing on March 20, 2015. At the conclusion of that hearing an Arbitrator with the Residential Tenancy Branch:

- determined that the Landlord must pay the Tenant double the security deposit, in the amount of \$725.00;
- determined that the Tenant's claim for a rent refund of \$362.50 should be dismissed;
- determined that the Landlord must pay the Tenant \$50.00 in compensation for the cost of filing the Application for Dispute Resolution; and
- granted the Tenant a monetary Order for \$775.00.

On April 13, 2015 the Landlord filed an Application for Review Consideration and on April 20, 2015 an Arbitrator with the Residential Tenancy Branch:

- determined that a new hearing should be convened; and
- ordered that the previous Arbitrator's decision and Order of March 20, 2015 be suspended pending the conclusion of the new hearing.

The hearing on June 08, 2015 was convened to consider the merits of the Tenant's Application for Dispute Resolution. Both parties were represented at the hearing on June 08, 2015 and were given the opportunity to present relevant evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that on April 30, 2015 the Notice of Hearing and the Review Consideration package were sent to the Agent for the Tenant, by registered mail. The Agent for the Tenant acknowledged receipt of these documents.

On May 06, 2015 the Landlord submitted 19 pages of evidence and two receipts to the Residential Tenancy Branch. The Landlord stated that the receipts and the cover letter, dated May 03, 2015, that were submitted to the Residential Tenancy Branch on May 06, 2015 were not served to the Tenant. As these documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

The Landlord stated that the tenancy agreement and copy of the Tenant's Application for Dispute resolution that were submitted to the Residential Tenancy Branch on May 06, 2015 were served to the Tenant on April 30, 2015, with the notice of this hearing. The Agent for the Tenant stated that these documents were not included with the documents served to her. As these documents were submitted in evidence by the Tenant, I find I am able to consider the documents when determining this matter.

The Landlord stated that the remainder of the documents that were submitted to the Residential Tenancy Branch on May 06, 2015 were served to the Tenant on April 30, 2015, with the notice of this hearing. The Agent for the Tenant acknowledged receipt of those documents and they were accepted as evidence for these proceedings.

The Agent for the Tenant stated that the Application for Dispute Resolution and documents the Tenant wishes to rely upon as evidence were served to the Landlord on May 08, 2015, by registered mail. The Landlord acknowledged receipt of those documents and they were accepted as evidence for these proceedings.

It is difficult to determine that the parties are in receipt of the exact duplicates of documents submitted in evidence, given that this hearing was conducted via teleconference. During the hearing, however, I confirmed that both parties were in possession of the documents referenced in this decision.

Preliminary Matter

On the basis of information contained on the Application for Dispute Resolution, I find it is readily apparent that the Tenant is seeking a rent refund, in the amount of \$362.50, for the period between October 16, 2014 and October 31, 2014. I therefore find it reasonable to consider that claim at these proceedings, in addition to the claim for a refund of the security deposit.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to a rent refund?

Background and Evidence

The Landlord and the Tenant agree:

- on September 11, 2014 the Landlord and the Tenant entered into a tenancy agreement;
- the Agent for the Landlord signed the tenancy agreement on behalf of the Tenant;
- the tenancy agreement required the Tenant to pay monthly rent of \$725.00 by the first day of each month;
- the tenancy agreement stipulated that the tenancy began on October 16, 2014;
- a security deposit of \$362.50 was paid on September 12, 2014;
- rent for the period of October 16, 2014 and October 31, 2014, in the amount of \$362.50, was also paid on September 12, 2014;
- the Tenant was planning to move into the rental unit in November of 2014;
- the Tenant did not authorize the Landlord to retain the security deposit; and

- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Tenant stated that on October 18, 2014 the Landlord told her she did not have a key for the rental unit and that she would provide her with a key when they met on October 20, 2014. The Landlord stated that on October 18, 2014 she informed the Agent for the Tenant that the rental unit was unlocked and that there was a key to the unit inside.

The Agent for the Tenant stated that on October 18, 2014 she asked the Landlord to install an additional outlet for a television and an additional outlet for a telephone; that the Landlord told her that she did not wish to install additional outlets; and that the Landlord told her she would not pay to have the additional outlets installed.

The Landlord stated that on October 19, 2014 the Agent for the Tenant asked for four additional cable/telephone jacks and she told her that the Tenant would have to arrange, and pay for, any outlet installations. She stated that during this discussion the Agent for the Tenant told her that the Tenant did not wish to proceed with the tenancy.

The Landlord and the Tenant agree that on October 19, 2014 the Landlord sent the Agent for the Tenant an email, a copy of which was submitted in evidence. In this email the Landlord informed the Agent for the Tenant that she never agreed to provide additional outlets; that she would provide additional cable; and that the Tenant could add additional outlets at her own expense; and that she is willing to return the damage deposit if this is a "huge issue" for the Tenant. The Agent for the Tenant stated that she interpreted this to mean that the Landlord was offering to end the tenancy.

The Landlord and the Tenant agree that on October 19, 2014 the Agent for the Tenant responded to the aforementioned email, and a copy of that email response was submitted in evidence. In this email the Agent for the Tenant informed the Landlord that the Tenant determined that it was best to find another rental unit. The Agent for the Tenant stated that this email served to inform the Landlord that the Tenant would like to end the tenancy.

The Landlord and the Tenant agree that on October 20, 2014 the Landlord sent the Agent for the Tenant an email, a copy of which was submitted in evidence. In this email the Landlord informed the Agent for the Tenant that she would not be refunding the security deposit.

The Landlord submitted a copy of a letter from legal counsel, dated October 29, 2014. In this letter legal counsel directed the Landlord to refund the \$362.50 that was paid by the Agent for the Tenant, by sending it to counsel's business office. The Landlord stated that when she received the letter dated October 29, 2014, she did not return the security deposit because she had not been provided with a forwarding address for the Tenant.

The Landlord stated that sometime in May of 2015 she returned the security deposit of \$362.50 by mailing it to the Agent for the Tenant. The Agent for the Tenant stated that she received a cheque for \$362.50, and that the cheque was dated April 24, 2015.

Analysis

On the basis of the undisputed evidence, I find that the Agent for the Tenant acted on behalf of

the Tenant when the parties entered into this tenancy agreement. In the absence of any evidence to the contrary, I find that the Agent for the Tenant has the right to act on behalf of the Tenant in this matter.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a tenancy agreement that began on October 16, 2014, which required the Tenant to pay rent of \$362.50 for the period between October 16, 2014 and October 31, 2014.

Section 26 of the *Act* requires a tenant to pay rent when it is due. As this tenancy began on October 16, 2014, I find that rent of \$362.50 was due on October 16, 2014. On the basis of the undisputed evidence, I find that on September 12, 2014 rent of \$362.50 was paid for October.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant suffers a loss as a result of the landlord breaching the *Act* or the tenancy agreement. As there is no evidence that this tenancy ended because the Landlord breached the *Act* or the tenancy agreement, I dismiss the Tenant's application to recover the rent for October. The Tenant remained obligated to pay rent for the month of October even if the Tenant opted not to occupy the rental unit in October.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the parties agree, in writing, to end the tenancy. I find that the emails exchanged on October 19, 2014 constitute a written agreement to end the tenancy. In my view both parties clearly communicated their willingness to end the tenancy in those emails. I therefore find that this tenancy ended on October 19, 2014 in accordance with section 44(1)(c) of the *Act*.

I find that the Tenant is not entitled to a rent refund for October of 2014, as there is no evidence that the Landlord agreed to refund the rent as a term of the mutual agreement and there is nothing in the *Act* that requires a landlord to refund rent if the Tenant agrees to vacate the rental unit prior to the end of the month or the end of the rental period.

Although the letter from legal counsel, dated October 29, 2014, does not explicitly state that the security deposit should be refunded, I find the Landlord knew, or should have known, that the request for \$362.50 was a request for the return of the security deposit. In reaching this conclusion I was heavily influenced by the fact that the lawyer declares that in an email of October 19, 2014 the Landlord agreed to "provide to her the sum of \$362.50" and in an email dated October 19, 2014 the Landlord offers to return the security deposit, which she refers to as the "damage deposit".

I find that the Landlord received a forwarding address for the Tenant when she received the letter from legal counsel, dated October 29, 2014. It is very clear from the letter that the lawyer is representing the Agent for the Tenant. Given that the Agent for the Tenant had represented the Tenant fully in this tenancy, I find that the Landlord should have understood that the Agent for the Tenant had the right to act on behalf of the Tenant, including the right to provide a forwarding address for the Tenant.

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 within 15 days after the tenancy

ended and the forwarding address was received.

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.

Conclusion

The Tenant has established a monetary claim of \$775.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the \$362.50 that was returned to the Agent for the Tenant in April or May of 2015.

I therefore grant a monetary Order for \$412.50. 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 that Court.

This decision and Order replaces the decision and Order dated March 20, 2015, in which the Arbitrator granted a monetary Order for \$775.00.

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: June 08, 2015

Residential Tenancy Branch

