



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit and return of the rent paid for March 2014. The landlord did not appear at the hearing. The tenant submitted a registered mail receipt, including tracking number, as proof the hearing documents were sent to the landlord via registered mail on October 24, 2014. The registered mail was returned to the tenant as it was not picked up by the landlord. The service address used to serve the hearing documents to the landlord is the same address that was used to mail the rent cheques to, with the last cheque being mailed in February 2014. The tenant provided a copy of her Income Assistance benefit statement for March 2014 which provided this information. The tenant also provided as evidence a BC Assessment property assessment notice indicating that, as of September 2014, the landlord was still the owner of the property used by the tenant as the landlord's service address and that BC Assessments records show that the mailing address for the owner is the same as the service address used by the tenant. .

Section 89(1) of the Act provides that an applicant is to serve the respondent with an application for a Monetary Order in one of the ways provided under section 89(1). I am satisfied that the service address used by the tenant to send the hearing documents is the landlord's address of doing business as a landlord and the service address used by the tenant complies with section 89(1) of the Act.

Section 90 of the Act deems a person to have received documents five days after mailing, even if they refuse to accept or pick up their mail.

In light of the above, I deemed the landlord served with the hearing documents five days after mailing and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Is the tenant entitled to return of the rent paid to the landlord for March 2014?

Background and Evidence

The tenancy commenced in 2012 and the tenant paid a security deposit of \$850.00. The monthly rent was \$1,750.00 due on the 1st day of every month. The tenant's rent was paid from a variety of sources including: \$850.00 of subsidy from BC Housing, \$595.00 from Income Assistance, and the balance paid by the tenant.

I heard that the landlord's son was acting as agent for the landlord throughout the tenancy and that is the person she primarily had contact with. I heard that the tenant gave notice to end her tenancy in writing by way of a letter dated December 28, 2013. The notice was given to the landlord's son's girlfriend when she came to pick up the rent for January 2014. The notice to end tenancy has a stated effective date of March 1, 2014.

In response the landlord's son enquired as to the reason the tenant was moving but did not initially say anything about the effective date of March 1, 2014 until a text message he sent on February 25, 2014 where he states: "I really need the house empty by the first. I'm sorry but I have new people moving in."

Also in the last week of February 2014 Income Assistance sent \$595.00 to the landlord for rent for March 2014. On February 28, 2014 the tenant contacts the landlord's son via text message about returning the rent cheque to Income Assistance. Then the tenant requested the landlord give her the money directly as she needed it to give to her new landlord. In response, the landlord's son stated in a text message that "Ministry said they want the money". The tenant testified that the landlord did not return the money to the Ministry or give it to her.

The tenant testified that there were no new tenants waiting to move in on March 1, 2014. The tenant testified that she moved out of the rental unit March 1 or 2, 2014 and finished cleaning the rental unit March 4, 2014 upon request of the landlord's son. The keys were returned to the landlord's son on March 5, 2014 as he was too busy to meet on an earlier date. Also on March 5, 2014 the landlord's son and the tenant's daughter inspected the rental unit. The landlord's son indicated to the tenant's daughter that the security deposit would be sent to the tenant.

On March 7, 2014 the tenant offers to provide her forwarding address to the landlord's son via text message to which he responds that he would be suing her for damages and he was not giving her any money.

The tenant testified that the security deposit was never returned to her, that she did not authorize the landlord to make any deductions from the security deposit; the landlord did not file an Application for Dispute Resolution against her; and, that she provided a forwarding address to the landlord, in writing, by way of registered mail sent on September 18, 2014. The tenant provided a copy of the registered mail receipt, including tracking number, and a copy of the letter she wrote to the landlord to request her security deposit and provided a forwarding

address that is dated August 28, 2014. The registered mail sent to the landlord on September 18, 2014 was returned to sender as it was not picked up by the landlord.

The tenant seeks return of the rent money paid to the landlord by Income Assistance for March 2014 and was agreeable to a deduction for over-holding. The tenant was also seeking return of double the security deposit since the landlord failed to administer the security deposit as required.

Evidence provided for this proceeding included copies of: the tenant's notice to end tenancy dated December 28, 2013; the tenant's Income Assistance benefit statement for the month of February 2014 showing payment of March 2014 rent; numerous text message exchanges between the tenant and the landlord's son; the letter of August 28, 2014 providing the landlord with the tenant's forwarding address; registered mail receipts dated September 18, 2014 and October 24, 2014.

Analysis

Section 38(1) of the Act provides that, unless a landlord has a legal right to retain the security deposit, a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished her right to return of the security deposit; nor, did the tenant authorize the landlord to retain any part of it in writing.

Based upon the letter of August 28, 2014 and the registered mail receipt of September 18, 2014, I am satisfied the tenant sent the landlord her forwarding address in writing by registered mail sent on September 18, 2014. Although the landlord did not pick up the registered mail, section 90 of the Act deems a person to have received mail five days after mailing so that a party cannot avoid service. Therefore, I deem the landlord to be in receipt of the tenant's forwarding address in writing as of September 23, 2014.

Pursuant to the landlord's obligations provided under section 38(1), the landlord was obligated to either return the tenant's security deposit or file an Application for Dispute Resolution seeking authorization to retain it no later than October 8, 2014. Since the landlord failed to comply with section 38(1), I find the landlord must now pay the tenant double the amount of the security deposit under section 38(6) of the Act and I award the tenant compensation of \$1,700.00 as requested.

With respect to the tenant's notice to end tenancy, the stated effective date of March 1, 2014 was non-compliant with section 45 of the Act. Where a tenant gives notice to end their month-to-month tenancy, the effective date must be at least one month after the notice is given and be on a day before rent is due. Since rent was due on the 1st of the month, her notice should have had an effective date of February 28, 2014 or March 31, 2014 so as to comply with the Act. Section 53 of the Act provides that where an effective date is non-compliant, it automatically corrects to comply with the Act. Based upon the landlord's text message of February 25, 2014 I find the landlord was relying upon the tenancy being at an end as of February 28, 2014.

Where a tenant fails to vacate the rental unit by the end of the tenancy, the landlord is entitled to make a claim for over-holding on a per diem basis against the tenant but the landlord has not yet made any such claim.

In light of the above, I find the tenancy ended as of February 28, 2014 and the rent sent to the landlord by Income Assistance for the month of March 2014 should be returned to the tenant and any claims for over-holding shall be addressed upon such an application by the landlord. Therefore, I award the tenant recovery of the March 2014 rent paid to the landlord which is \$595.00.

In summary, the tenant was successful in this Application and I provide her with a Monetary Order in the total sum of \$2,295.00 to serve upon the landlord and enforce as necessary. This amount is the sum of double the security deposit of \$1,700.00 and rent of \$595.00 for the month of March 2014.

Conclusion

The tenant has been provided a Monetary Order in the total sum of \$2,295.00 to serve and enforce as necessary.

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

