



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, RPP, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant 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; for the return of the Tenant’s personal property; to recovery filing fee from the Landlord; and for “Other” issues.

The Tenant appeared for the hearing with a Translator who also acted as the Tenant’s advocate. The Tenant provided some affirmed testimony in English as well as documentary evidence prior to the hearing. There was no appearance for the Landlord during the 50 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that the Landlord was served with a copy of the Application and the Notice of Hearing documents on June 17, 2015 by registered mail. These documents were sent to the address the Landlord resided at during the tenancy which was above the Tenant’s rental unit. The Tenant provided the Canada Post tracking number into oral testimony as evidence to verify this method of service; this number was recorded on the inside of the file. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find that the Landlord was deemed served with the required documents on June 22, 2015 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord which I have carefully considered in this Decision as follows.

Issue(s) to be Decided

Is the Tenant entitled to the return of her security deposit?

Is the Tenant entitled to the return of rent and personal property?

Background and Evidence

The Tenant testified through the translator that this tenancy for her and her friend started on May 1, 2015 for a monthly rental of \$1,000.00 payable on the first day of each month. No written tenancy agreement was completed by the parties.

However, before the tenancy began, the Landlord requested from the Tenant that she pay \$1,000.00 as a security deposit and half of the first month's rent in the amount of \$500.00. The Tenant informed the Landlord that the security deposit amount was over the allowable limit but the Landlord was insistent on this amount. In support of this, the Tenant provided a document in Chinese which she testified was completed by the Landlord and given to her. The translator explained that the two lines in Chinese translates to showing that the parties had agreed that \$1,000.00 relates to the security deposit and \$500.00 relates to the half of the first month's rent. The Tenant also provided a copy of the cheque she gave to the Landlord for the amount of \$1,500.00. The Tenant testified that the Landlord completed the cheque for her which was then signed by the Tenant. The copy of the cheque was provided into evidence and the memo section of the cheque states that it relates to "Deposit".

The Tenant testified that shortly after they moved in, the Tenant's friend no longer wanted to stay in the rental unit. The Tenant testified that they spoke to the Landlord on May 3, 2015 and the Landlord agreed to let them out of the tenancy. The Tenant testified that the Landlord agreed that they would only be charged for a week's rent and that the Tenant would be refunded \$250.00 from the \$500.00 that had already been paid towards half of the first month's rent.

The Tenant testified that they vacated the rental unit on May 6, 2015 and when she contacted the Landlord about the return of the outstanding monies, the Landlord arranged a time to meet with the Tenant for which she failed to appear for. The Tenant testified that despite repeated calls to the Landlord she would not answer her phone.

The Tenant testified that she provided the Landlord with a forwarding address in writing on May 25, 2015 by registered mail. The Tenant provided a copy of this letter containing the Tenant's forwarding address and a copy of the Canada Post tracking receipt as evidence to verify this method of service. The Tenant testified that to date she has not received any of the monies from the Landlord.

The Tenant also claims for the return of a cell phone. The Tenant testified that when she moved out on May 6, 2015, her friend accidentally left her cell phone at the rental unit. The Tenant testified that when they contacted the Landlord about it the Landlord

denied seeing the phone at the rental unit. The Tenant submits that she tried to call the cell phone and it was switched off. The Tenant asserted that this is evidence that the Landlord found the cell phone, kept it, and is now refusing to return it. The Tenant claims \$1,250.00 for the replacement cost of the phone. The total amount claimed by the Tenant is \$2,500.00.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the Tenant’s evidence, I find that the parties entered into a verbal tenancy agreement which is recognized and enforceable under the Act. As a result, I accept the Tenant’s testimony and documentary evidence that the Tenant paid to the Landlord \$1,000.00 as a security deposit at the start of the tenancy on May 1, 2015.

I accept the undisputed oral evidence of the Tenant that this tenancy terminated on May 7, 2015. I also accept the undisputed evidence of the Tenant that she provided the Landlord with a forwarding address in writing by registered mail on May 25, 2015.

Section 38(1) of the Act states 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. There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant’s forwarding address or returned the security deposit back to the Tenant. Therefore, I find that the Landlord has failed to comply with Section 38(1) of the Act.

Section 38(6) of the Act stipulates 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 security deposit. Based on the foregoing, I find the Tenant is entitled to double the return of her security deposit in the amount of **\$2,000.00**.

In relation to the return of the Tenant’s one week of rent in the amount of \$250.00, I find that there is insufficient evidence before me that the Landlord agreed to return to the

Tenant this amount as a result of ending the tenancy. Without such a written agreement, I am not prepared to award this portion of the Tenant's monetary claim.

In relation to the Tenant's Application for the return of her friend's phone, I find that the Tenant's evidence amounts to a mere allegation that the Landlord took the phone knowing it belonged to the Tenant's friend and now retains control and possession of it. I find the Tenant's evidence in this respect is speculative and unsubstantiated and is not sufficient for me to conclude that the Landlord breached the Act. Furthermore, the Tenant failed to provide sufficient evidence to verify the loss being claimed for the cell phone in the amount of \$1,250.00. Therefore, this portion of the Tenant's monetary claims is also dismissed.

As the Tenant had to make an Application to recover her security deposit which she was successful in doing, I also award the Tenant the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is **\$2,050.00**. The Tenant is issued with a Monetary Order for this amount. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make payment.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Landlord is ordered to pay double the security deposit back to the Tenant and the filing fee in the amount of \$2,050.00. The remaining portions of the Tenant's monetary claim and Application are dismissed.

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: August 12, 2015

Residential Tenancy Branch

