



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

A hearing was conducted by conference call in the presence the applicant and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. The tenant testified she served both respondents by mailing, by registered mail to where they reside on March 16, 2015. The package that was addressed to MW was picked up. The other respondent failed to pick up the package addressed to her and it was returned to the applicant. I determined there was sufficient service on KW despite the fact that she did not pick up the Application for Dispute Resolution.

Issue(s) to be Decided:

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence

The tenant agreed to rent a bed in one of the rooms in the rental property in early November for \$500 per month. She paid 6 months rent in advance and a \$500 security deposit. The tenant did not sign a tenancy agreement.

There were significant problems with the rental unit. It was not what was represented. The tenant complained to the landlord. In early December the landlord agreed to release the tenant

from the balance of the term of the tenancy agreement. Relying on this assurance the tenant vacated the rental unit on December 8, 2014.

The landlord has refused to return the rent for the period January 2015 to and including April 2015. In addition the landlord has refused to return the security deposit.

Analysis:

With regard to each of the tenant's claims I find as follows:

- a. There were significant problems with the rental unit which the landlord failed to rectify. The landlord misrepresented material aspects of the rental unit in particular the number of tenants who would be living in one bedroom. The tenant complained to the landlord about the problems. On December 6, 2014 the landlord agreed to release the tenant. The tenant relied on this assurance and vacated the rental unit on December 8, 2014. I am satisfied this statement meant that the landlord would not be charging the tenant rent for the period January 2015 to and including April 2015. I determined the tenant is entitled to the return of the pre-paid rent for this period which amounts to \$2000.
- b. The tenant also seeks the return of her security deposit in the sum of \$500. The Residential Tenancy Act permits a landlord to charge a maximum of $\frac{1}{2}$ month rent. Section 19 of the Act provides as follows:

Limits on amount of deposits

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Thus the tenant is entitled to \$250 as the landlord has breached section 19 of the Act and the tenant is entitled to the return of the overpayment.

The Residential Tenancy Act further provides that a landlord must either file a claim against the tenant or return the security deposit within 15 days of the later of the end of tenancy date or the date the landlord receives the tenant's forwarding address in writing.

The tenancy ended on December 8, 2014 when the tenant vacated the rental unit. However, the tenant did not present evidence as to whether she provided the landlord with her forwarding address in writing. I was not able to find an evidence of such a notice in the materials submitted by the tenant. I determined the tenant failed to prove she provided the landlord with her forwarding address in writing at the hiring. As a result I dismissed the claim for the \$250 security deposit with liberty to re-apply.

The Act further provides that if a landlord fails to return the security deposit with 15 days of the later of the end of tenancy date or the date the landlord receives the tenant's forwarding address in writing the tenant is entitled to the doubling of the deposit.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2250.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: August 07, 2015

Residential Tenancy Branch

