



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on September 23, 2015. Canada Post tracking numbers were provided by the tenant in verbal testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this month to month tenancy started on April 01, 2015. Rent for this unit was \$1,200.00 per month due on the 1st of each month. The tenant paid a security deposit of \$600.00. The tenant testified that this was a verbal agreement between them and no written tenancy agreement was completed.

The tenant testified that on July 31, 2015 the landlord gave the tenant a hand written notice to end the tenancy on September 01, 2015. The landlord wrote in this notice that he was giving the tenant this notice for renovations of the home to comply with regulations. The tenant agreed she did not dispute this notice and vacated the rental unit on August 29, 2015.

The tenant testified that as she paid her last month's rent she should be entitled to recover this due to the landlord's notice. The tenant therefore seeks a Monetary Order for \$1,200.00.

The tenant testified that at the start of the tenancy she rented this unit with her boyfriend who worked with the landlord. The landlord did not ask them to pay a security deposit and the landlord did not mention that hydro was not included in the rent. The tenant testified that the landlord never asked them to pay any hydro costs during the tenancy. On July 31, 2015 the landlord sent the tenant a disconnection letter asking for the amount of \$327.60 to be paid for hydro and \$600.00 to be paid for a security deposit. The tenant testified that she did not want to get disconnected so she paid \$945.35 on August 08, 2015. This was for her security deposit of \$600.00 and the remainder was for hydro although the tenant testified she miscalculated this amount and paid \$345.35.

The tenant testified that the landlord has never provided the tenant with a hydro bill and the tenant seeks to recover this amount from the landlord plus her security deposit. The tenant agreed she has not provided the landlord with her forwarding address in writing.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's documentary evidence and sworn testimony before me.

With regard to the tenant's claim to recover the last month's rent paid. I refer the parties to s. 51(1) of the *Act* which states:

51 (1) 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.

The tenant did not receive a legal notice under s. 49 of the *Act*. If the landlord does not serve the tenant with a legal notice under the *Act* then the tenant does not have to vacate the rental unit. If the tenant chooses to vacate the rental unit then they are not entitled to compensation under s. 51 of the *Act* as no legal or valid notice under s. 49 has been given to the tenant. This section of the tenant's application is dismissed without leave to reapply.

With regard to the tenant's claim to recover her security deposit; the tenant has not given the landlord her forwarding address in writing. Under s. 38 of the *Act* the tenant is required to do so and the landlord then has 15 days to either return the tenant's security deposit or file an application to keep it. As the tenant has not provided her forwarding address in writing then I must find that her application to recover her security deposit is premature. I therefore dismiss this section of the tenant's application with leave to reapply.

With regard to the tenant's application to recover the amount paid for hydro of \$345.35. The tenant testified that this was a verbal agreement between the parties concerning the rental of this unit; the landlord never informed the tenant that hydro was to be paid and has never asked for any hydro payments during the tenancy. Furthermore the landlord has not provided the tenant with a copy of any hydro bills. When the parties make a verbal agreement to rent a unit then the terms of this agreement are unknown to a third party. However, I find the landlord is required to do a tenancy agreement under s. 13(1) of the *Act* and document any services or facilities included in the rent. The landlord failed to do so. Furthermore, the landlord has failed to provide any copies of the hydro bills and has not asked for any hydro payments until July 31, 2015. I am satisfied from the undisputed testimony before me that the hydro was therefore included in the rent and I find the tenant is entitled to recover the hydro payment made on August 08, 2015 of **\$345.35** pursuant to s. 67 of the *Act*.

As the tenant's claim has some merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$395.35**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant's application to recover the security deposit is dismissed with leave to reapply.

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: December 22, 2015

Residential Tenancy Branch

