



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on February 24, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally delivered to the Landlord's business office. The Agent for the Landlord acknowledged that these documents were received by the Landlord.

The Tenant stated that on February 24, 2016 she submitted two receipts to the Residential Tenancy Branch. She stated that these receipts were served to the Landlord with the Application for Dispute Resolution on February 24, 2016. The Agent for the Landlord acknowledged receipt of this evidence.

The Tenant was advised that I am not in possession of the receipts she submitted in evidence. The Tenant stated that she was able to resubmit copies of those receipts and she was advised that if they are re-submitted to the Residential Tenancy Branch by October 14, 2016 they will be accepted as evidence for these proceedings. These receipts were received by the Residential Tenancy Branch on October 05, 2016 and were accepted as evidence for these proceedings.

I have no documentary evidence from the Landlord. The Agent for the Landlord stated that he has just recently become involved with this matter and he does not know if evidence was submitted to the Residential Tenancy Branch or if evidence was served to the Tenant.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter:

The Agent for the Landlord dialed into the teleconference approximately seven minutes after the hearing commenced. Issues that had been discussed prior to his arrival were reviewed with the Agent for the Landlord.

Issue(s) to be Decided:

Is the Tenant entitled to a rent refund?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on June 20, 2009;
- the Tenant is still residing in the rental unit; and
- rent of \$375.00 is due by the first day of each month.

The Tenant stated that:

- her rent has typically been paid directly to the Landlord by the Government;
- in December of 2013 she paid her rent, in cash, on two occasions;
- in addition to these two cash payments her rent for December of 2013 was also paid to the Landlord by the Government;
- she paid her rent on two separate occasions in December of 2013 because she was being threatened with eviction;
- she was given receipt #011982 when she made one cash payment on December 01, 2013;
- she was given receipt #011983 when she made another cash payment on December 01, 2013; and
- she has been asking for a refund of the additional two payments since the overpayment, although she has never done so in writing.

The Agent for the Landlord stated that:

- he has not direct knowledge of the alleged overpayment, as he was not working with the Landlord in December of 2013;
- he has no knowledge of the Tenant requesting a rent refund for this overpayment, in writing;
- the Landlord received an email, dated September 16, 2014, in which a support worker for the Tenant discusses an overpayment of rent in December of 2013, in the amount of \$375, and unrelated thefts of \$400.00 and \$500.00;
- he does not know if the Landlord responded to this email;
- the rent ledger shows that the Tenant's rent for December of 2013 was paid, by cheque, on November 27, 2013;

- receipt #011982, dated December 01, 2013, indicates that rent for December was paid by cheque;
- receipt #011952, dated December 01, 2013, was signed by a “tenant support worker” who no longer acts on behalf of the Landlord; and
- he thinks receipt #011952 was issued in error because the Landlord has no record of a second payment for December of 2013.

The Legal Advocate for the Tenant asked the Agent for the Landlord if there is a cheque number on the rent ledger that corresponds to the rent payment made on November 27, 2013, and he replied that there was not.

Analysis:

I find that the Tenant’s rent of \$375.00 for December of 2013 was paid by the Provincial Government. This conclusion is based on the Tenant’s testimony that the Government paid her rent for December of 2013 and the Agent for the Landlord’s testimony that rent for this month was paid, by cheque, on November 27, 2016. As the Tenant does not allege that she ever paid her rent by cheque, I find it reasonable to conclude that the November 27, 2016 payment was made by the Provincial Government.

I find that the Tenant has submitted insufficient evidence to show that she made two cash payments of \$375.00 for rent for December of 2013. In reaching this conclusion I was heavily influenced by the fact that receipt #011982, which was submitted in evidence, has a notation on it that indicates this receipt was issued for a rent payment that was made by cheque. As this receipt appears to have been issued for a payment made by cheque, I find that this receipt does not serve to corroborate the Tenant’s testimony that she made two cash payments of \$375.00 in December of 2013.

I find it entirely possible that receipt #011982 was provided to the Tenant to acknowledge the December rent payment made by the Provincial Government on behalf of the Tenant.

As the Tenant has failed to establish that she made two cash payments of \$375.00 for rent for December of 2013, I dismiss her claim for a refund of one of those payments.

I find, on the balance of probabilities, that the Tenant paid rent of \$375.00 in cash for rent for December of 2013. This conclusion is based, in part, on the Tenant’s testimony that she paid rent of \$375.00 in cash on December 01, 2013. I find that receipt #011952, dated December 01, 2013, corroborates the Tenant’s testimony that she paid rent of \$375.00.

In determining that the Tenant paid rent of \$375.00 in cash for December of 2013, I placed little weight on the Agent for the Landlord’s testimony that he believes receipt #011952 was issued in error because the payment is not reflected in the rent ledger. I find that is mere speculation on the part of the Agent for the Landlord; that it is possible

that the cash payment was made to a person acting as an agent for the Landlord, and that the payment was not forwarded to the Landlord; and that it is possible the cash payment was forwarded to the Landlord and was inadvertently not recorded.

In determining that the Tenant paid an additional rent payment of \$375.00 for December of 2013 I was influenced, to some degree, that in September of 2014 the Landlord was informed that rent had been overpaid by \$375.00. The fact that the Tenant began pursuing this overpayment in 2014, in my view, lends some credibility to the claim.

As I have determined that the Tenant paid \$375.00 in cash in rent for December of 2013 and that the Provincial Government also paid her rent for December of 2013, I find that the Tenant is entitled to a rent refund of \$375.00.

Conclusion:

The Tenant has established a monetary claim of \$375.00 as a result of a rent overpayment from December of 2013 and I am issuing a monetary Order in that amount. In the event 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 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: October 05, 2016

Residential Tenancy Branch