



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, return of double the security deposit, an order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that on June 24, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the landlord via registered mail at the address noted on the application. A Canada Post tracking number was provided as evidence of service. The mail was returned to the tenant, marked by Canada Post as "unclaimed." The tenant used an address that had been supplied by the landlord on correspondence given by the landlord to the tenant.

A party may not avoid service by a failure to claim registered mail. Therefore, I find that the documents are deemed to have been served effective June 29, 2016, in accordance with section 89 and 90 of the Act.

The landlord did not appear at the hearing.

Preliminary Matters

The tenant has requested the landlord comply with the Act by paying the tenant the sums claimed.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid?

Is the tenant entitled to compensation pursuant to section 51(1) of the Act?

Background and Evidence

The tenancy commenced in July 2011. Rent in the sum of \$1,035.00 was due on the first day of each month. The tenant paid a security deposit in the sum of \$500.00 and pet deposit of \$200.00. The tenant submitted a single page; hand-written document entitled "Rental Agreement." The document provided only a phone number for the landlord, the details of rent and deposits owed and a record of payments for July 2011.

A copy of a hand-written receipt for the deposits and a months' rent was supplied as evidence.

A copy of the second page of a Notice to Increase Rent issued October 29, 2012 was submitted as evidence.

The tenant could not recall signing a move-in inspection report and said if an inspection had occurred a copy was not provided by the landlord.

The tenant said that there was a flood in the rental unit in June 2015. The landlord told the tenant to vacate so that renovation could take place. The tenant accepted this direction and vacated the unit. The tenant has requested compensation as if a two month Notice to end tenancy for landlords' use of the property had been issued.

The tenant supplied copies of a number of text messages sent between the parties.

The tenant supplied a copy of a July 20, 2015 letter sent to the landlord at an address where the landlord resided at that time. The tenant provided a forwarding address and a request for return of the deposits. The letter was handed to the landlord on July 20, 2015.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the landlord received the tenants' written forwarding address on the date the letter was given to the landlord; July 20, 2015.

I have no evidence before me that that landlord has repaid the deposit or submitted a claim against the deposit, in accordance with the Act.

The landlord did not attend the hearing to oppose the tenants' claim.

Therefore, I find pursuant to section 38(6) of the Act that the tenant is entitled to return of double the pet and security deposits held by the landlord, in the sum of \$1,400.00.

Section 51(1) of the Act provides:

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.

(Emphasis added)

When the landlord told the tenants to vacate the tenants were not required to do so. Unless the tenancy was frustrated, or a Notice ending tenancy had been issued in accordance with section 49 of the Act, in the approved form, the tenants did not need to vacate. In the absence of any Notice ending tenancy I find that the claim for compensation pursuant to section 51(1) of the Act is dismissed.

As the tenants' application has merit I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of \$1,500.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant is entitled to return of double the pet and security deposits.

The claim for compensation pursuant to section 51(1) of the Act is dismissed.

The tenant is entitled to recover the filing fee cost from the landlord.

This decision is final and binding and 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, 2016

Residential Tenancy Branch

