# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1034212 BC Ltd.
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes:

MNSD, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the Application for Dispute Resolution that the Tenant is also seeking a rent refund and that matter will be considered at these proceedings.

The Tenant stated that on August 21, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on August 19, 2016 were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement. The Tenant stated that this package has not been returned to her by Canada Post.

In the absence of evidence to the contrary I find that the aforementioned documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act);* however the Landlord did not appear at the hearing. As the Application for Dispute Resolution has been properly served to the Landlord, the hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided:

Is the Tenant entitled to a rent refund and/or the return of security deposit?

Background and Evidence:

The Tenant stated that:

- the tenancy began on June 15, 2016;
- the tenancy was a fixed term tenancy, the fixed term of which ended on June 30, 2017;
- the tenancy agreement required the Tenant to pay rent by the first day of each month;

- a security deposit and pet damage deposit of $1,925.00 was paid;
- on July 19, 2016 the Tenant sent the Landlord an email, in which she informed the Landlord she was ending the tenancy on August 15, 2016;
- on August 15, 2016 the Tenant sent the Landlord an email, in which she provided her forwarding address;
- the Landlord responded to the email of August 15, 2016, in which the Landlord informed the Tenant that her security/pet damage deposit would not be returned; and
- on August 30, 2015 the security and pet damage deposits were returned.

The Tenant is seeking to recover $962.50 in rent for the last half of August, given that she ended the tenancy on August 15, 2016.

The Tenant stated that she decided to end this tenancy because of her concerns with electrical and noise issues. She stated that she expressed those concerns to the Landlord in a series of emails and text messages, which she submitted in evidence.

In an email sent July 05, 2016 the Tenant reports loud music to the Landlord, who responds appropriately.

In a text message sent July 11, 2016 the Tenant reports loud music to the Landlord, who responds appropriately.

In a text message sent July 13, 2016 the Tenant reports loud music to the Landlord. The Tenant did not submit the Landlord's response to that text message.

In a series of undated text messages that were obviously exchanged sometime prior to the end of July, the parties discuss the Tenant moving into a different suite in the building.

In a text message sent July 16, 2016 the Tenant reports a problem with an electrical breaker tripping to the Landlord, who subsequently advises that an electrician will be called. In an email sent July 24, 2016 the Landlord informs the Tenant that an electrician has been contacted.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As the security deposit and pet damage deposit was returned within 15 days of the Landlord receiving a forwarding address for the Tenant, I find that the matter of the security and pet damage deposits has been fully resolved and I dismiss the application

to recover those deposits.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. On the basis of the undisputed evidence I find that rent was due by the first day of each month and that the Tenant was therefore obligated to pay $1,925.00 in rent for August by August 01, 2016. A tenant is typically not entitled to recover a portion of the monthly rent even if they opt to vacate the rental unit (with or without notice) prior to the end of the monthly rental period.

A tenant may be entitled to a rent refund if the tenancy ends pursuant to section 45(3) of the *Act,* which stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Branch Policy Guideline #8, with which I concur, defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The guideline further suggests that to end a tenancy agreement for breach of a material term a tenant must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a (reasonable) deadline included in the letter; and that if the problem is not fixed by the deadline, the party will end the tenancy.

Even if I were to accept that a material term of the tenancy was breached as a result of frequent excessive noise in the rental unit and/or an electrical breaker tripping, I would not conclude that the Tenant had the right to end this tenancy pursuant to section 45(3) of the *Act* as a result of those issues noise. In reaching this conclusion I was influenced by:

- the absence of any evidence that shows the Tenant advised the Landlord that she believed the noise or electrical issues was a breach of a material term of the tenancy;
- the absence of any evidence that shows the Tenant informed the Landlord that the problems must be fixed by a particular deadline; and
- the absence of any evidence that shows the Tenant informed the Landlord that she will end the tenancy if the problems were not fixed by the deadline.

I note that noise complaints are difficult for landlords to resolve in a timely manner and that even if the Tenant had informed the Landlord that she would end the tenancy if the noise was not resolved by a certain deadline, it would have taken the Landlord a significant amount of time to remedy the breach. When noise complaints are reported a landlord is obligated to investigate the complaints and, if warranted, to speak with the tenant who is creating the noise. In the event the noise disturbances continue the only option available to a landlord is to end the tenancy by serving a One Month Notice to End Tenancy, which can take up to 8 weeks to take effect. I therefore note that any deadline imposed by the Tenant would have had to reflect the time it would take for the

Landlord to remedy the issue.

I note that the Tenant informed the Landlord that she was ending the tenancy three days after reporting a problem with the electrical breaker, which is not a reasonable amount of time for a repair for an issue that is not an emergency.

As the Tenant has not established that she had the right to end this tenancy pursuant to section 45(3) of the *Act*, I find that she is not entitled to a rent refund for any portion of August of 2016.

As the Tenant has failed to establish that she is entitled to a rent reduction; she applied for the return of her security/pet damage deposits before the Landlord was obligated to return them; and the Landlord returned the deposits on time, I find that the Tenant has failed to establish the merits of her Application for Dispute Resolution. I therefore dismiss her application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution is dismissed in its entirety.

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: February 23, 2017

Residential Tenancy Branch