



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLDEN PRATA HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order permitting the landlord to keep all or part of the tenant's security deposit and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide one piece of additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The landlord testified that the tenant has incorrectly identified the landlord on her application. The tenant has entered the owner's name and his wife but not the company

name. The parties did not raise any objections to me amending the tenant's application to show the company name of the landlord and removing the other party named as a landlord.

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Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on May 05, 2016. The tenant rented a room in this unit and shared common areas with other tenants. Rent for this room was \$850.00 per month due on the 1st of each month. The tenant paid a security deposit of \$425.00 on May 05, 2016.

The tenant testified that the landlord failed to do a move in condition inspection report at the start of the tenancy. The tenant testified that the landlord was provided with the tenant's forwarding address which was sent by registered mail along with the keys to the unit on August 07, 2016. The tenant testified that the letter shows the date it was sent as August 07, 2016. The tenant testified that she did not give the landlord permission to keep all or part of her security deposit and the landlord has not returned her deposit within the allowable time frame. Due to this the tenant testified that she seeks to recover double the security deposit.

The tenant testified that she was aware that she ended her tenancy on August 01, 2016 and that it was a fixed term tenancy that was not due to end until August 31, 2016; however, the tenant testified that she no longer felt safe in the unit as the landlord would come into the unit without notice. The tenant referred to text messages from the landlord to the tenant in which he indicates he will enter her room. The tenant testified

that the landlord's agent said that the tenant could end her tenancy if someone was found to replace her. Her former roommate, who has continued to live in the unit, informed the tenant that a new tenant had moved into her room on August 02, 2016. The tenant testified that she has text messages from the landlord's agent who acknowledges that the tenant only has to pay rent for August 01, 2016 and the tenant testified that this was because the room was re-rented on August 02, 2016. The tenant provided copies of these text messages in documentary evidence.

The landlord disputed the tenant's application and has also filed an application for an Order permitting the landlord to keep the security deposit. The landlord testified that the tenant did ask the landlord to return the security deposit but he does not recall receiving a letter with her forwarding address when she sent the keys by registered mail. This registered mail was not received until August 31, 2016. The landlord was asked to look at the post mark on the envelope for the registered mail and the landlord at first testified that it was dated August 10, and then he testified August 15 and then testified August 31. The landlord provided a tracking number.

The tenant testified that this tracking number provided by the landlord was for her application and notice of hearing package which was sent to the landlord on August 31, 2016. A copy of the Canada Post tracking information was provide in the tenant's evidence.

The landlord testified that the tenant did not give proper notice to end the tenancy. A text message was sent giving notice to the landlord on July 13, 2016 and the tenant vacated around August 04 or August 05, 2016. The landlord agreed he is not seeking to recover any rent for August. The landlord testified that the room was not re-rented until September 01, 2016.

The landlord testified that because they did not receive the keys to the tenant's room or her fob until August 31, 2016 the landlord had to replace the keys and fob. The landlord

seeks to recover \$50.00 for a replacement fob and \$45.00 for the entrance key and room key.

The landlord testified that he also had to pay an employee to show the room to prospective tenants and seeks to recover the costs for this of \$250.00. The landlord seeks to recover the cost for this employee's gas to drive to the unit to show the room of \$35.00. The landlord also seeks to recover the costs to advertise the room on Craigslist and for the phone bill for dealing with prospective tenants of \$35.50.

The tenant asked the landlord why was he coming into the unit without notice as it made her feel unsafe. The landlord responded that he only came into the common areas to do repairs and never entered the tenant's room. The tenant asked why the landlord thinks he can claim these things as the room was re-rented the day after the tenant vacated. The landlord responded that the tenant did not finish her contract or give proper notice. The tenant asked the landlord why he is claiming for costs he did not incur. The landlord testified that the tenant did not rerun the keys and for security the locks had to be changed and they needed a key to show the room. The tenant asked the landlord how she was supposed to return the key when the landlord's wife/agent refused to meet the tenant to do a move out inspection. The landlord responded that the tenant asked City hall to do the inspection.

The landlord asked the tenant why she feels entitled to recover the security deposit when she broke the contract. The tenant responded that there were no damages and she only moved out because she felt threatened by the landlord.

I asked the landlord why he has not applied for rent for August, 2016 if the new tenants did not move into the room until September 01, 2016. The landlord responded that he did not think they could recover it and maybe the new tenants moved in on August 15, 2016 or September 01, 2016.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenant's application - Section 38(1) of the *Residential Tenancy Act* (Act) says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of one or all of the tenants to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the Act, the landlord must pay double the amount of the security and pet deposit to the tenant.

I find there were a number of inconsistencies with the landlord's evidence. The landlord was unsure when he received the keys back to the unit and seems confused with the registered mail sent by the tenant on August 31, 2016 and August 07, 2016; one containing the hearing documents and one containing the keys and a letter. The landlord was also unsure about when a new tenant moved into the unit and thought it was September 01, 2016 and then maybe it was August 15, 2016. The tenant's evidence shows it is likely that new tenants moved in on August 02, 2016 and the landlord's agent said the tenant would only have to pay rent for August 01, 2016 in a text message. The landlord testified that he did not receive a letter with the tenant's forwarding address yet did recall the tenant writing and asking for her security deposit to be returned. The letter provided by the tenant with her forwarding address was also a request for her security deposit to be returned. I find therefore I can place little weight on the landlord's claim that he did not receive the tenant's forwarding address in writing and I find this was sent by registered mail on August 07, 2016 and was deemed served five days later on August 12, 2016 pursuant to s. 90(a) of the Act.

I find the tenant's evidence more credible and based on the above that I find the tenant vacated the rental room on August 01, 2016 and the landlord received the tenant's forwarding address in writing on August 12, 2016; the landlord had until August 27, 2016 to return all of the tenant's security deposit or file a claim to keep it. As the landlord failed to do so within the 15 allowable days, the tenant has established a claim to have the security deposit doubled to an amount of **\$850.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the landlord's application – The landlord is claiming the amount of \$50.00 for a replacement fob and \$45.00 for keys as the tenant did not return them at the end of the tenancy. I am satisfied that the landlord did receive the keys by registered mail as the landlord's agent or wife refused to meet the tenant at the unit at the end of the tenancy so the keys could be returned at that time. Furthermore, I find the landlord has presented insufficient evidence to show that the locks were changed prior to receiving the keys or the actual costs to replace a fob or keys. This section of the landlord's application is therefore dismissed.

With regard to the landlord's claim for \$250.00 for his employee to show the unit and for \$35.00 for gas for this person to travel to the unit; I am not satisfied that the landlord incurred any costs to show the unit. Showing a unit or room to prospective tenants is the cost of doing business as a landlord and there is no provision under the *Act* for me to award these costs to the landlord as the landlord would incur costs of this nature even if the tenancy had ran until the end of its fixed term. These sections of the landlord's application are therefore dismissed.

With regard to the landlord's claim to recover advertising costs and costs for phone calls; the landlord advertised the unit on a free internet site and has provided insufficient evidence to show any further advertising costs or costs for phone calls made to re-rent the unit. Again this is the cost of doing business as a landlord and these costs must be borne by the landlord. This section of the landlord's application is therefore dismissed.

As the tenant's application is successful and the landlord's application has no merit I find the tenant is entitled to recover her filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*. The landlord must bear the cost of filing his own application.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$950.00** comprised of double the security deposit (\$850.00) and the filing fee (\$100.00). 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 landlord's application is dismissed in its entirety without 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: March 01, 2017

Residential Tenancy Branch

