



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (MNDC)

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; The tenant had not applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, but I have allowed the tenant to amend her application as she has made mention of a claim of this nature in the details of the dispute and the landlord would be aware of what the tenant is seeking. The tenant has also applied 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 November 08, 2016. Canada Post tracking numbers were provided by the tenant in documentary evidence. 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 double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed by the landlord?

Background and Evidence

The tenant testified that she had a verbal agreement with the landlord to rent a room in this unit and share common areas with a roommate. The month to month tenancy stated on October 01, 2016. Rent for this room was \$650.00 per month due on the first of each month. The tenant paid a security deposit of \$325.00 on October 01, 2016 and has provided the receipt showing the first month's rent and deposit payment.

The tenant testified that the tenancy ended nine days later on October 09, 2016. The tenant testified that she was told to move out because the landlord said she had broken the rules when the tenant allowed her friend to stay over when he was sick. The landlord beat on the tenant's door at 4.00 a.m. and woke the tenant up. The landlord told the tenant she didn't want the tenant to have a visitor. As the landlord had told the tenant she must move out, the tenant did so.

The tenant testified that she did not give the landlord permission to keep all or part of the security deposit and provided the landlord with a letter asking her to return the security deposit to the tenant to the forwarding address contained in the letter. This letter was put in the landlord's mail box on October 11, 2016. The tenant has provided photographs showing this service and a letter from a witness who witnessed the service. The tenant testified that as the landlord has not returned the security deposit, the tenant seeks to recover double the security deposit to an amount of \$650.00.

The tenant testified that she also asked the landlord to return 21 days of rent for the balance of days in October after the tenant was told to leave. The tenant testified that the landlord said she would return some money but it would be less because the tenant had a visitor stay overnight. The tenant agreed that she did not receive a legal notice to end the tenancy and did not provide the landlord with written notice to end the tenancy. The tenant seeks to recover 21 days of rent to an amount of 454.00 and requested that this amount is doubled.

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 landlords, I have carefully considered the tenants undisputed evidence before me.

With regard to the tenants application to recover double the security deposit; 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 deposits to the tenant or to make a claim against them by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the deposits then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the deposits to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on October 14, 2016 as it was deemed served three days after it was put in the landlord's mail slot. As a result, the landlord had until October 29, 2016 to return all of the tenant's deposit or file a claim to keep it. As the landlord failed to do so, the tenant has established a claim to have the deposit doubled to an amount of **\$650.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the deposit for the term of the tenancy.

With regard to the tenant's application to recover double the balance of rent paid after the tenant vacated the rental unit. I refer the parties to s. 45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant agreed that the landlord had not served the tenant with a legal Notice to End Tenancy and had just told her she must move out. Unless a landlord does serve the tenant with

a legal Notice to End Tenancy then the tenant does not have to vacate the rental unit. As the landlord had not served a Notice then the tenants must give one clear month's notice to end a tenancy.

As the tenant failed to do so then the tenant is not entitled to recover rent for the remainder of the month of October, 2016. In any event there is no provision under the *Act* for any doubling of rent payments. This doubling provision only applies to security deposits not returned within 15 days of a landlord receiving the tenant's forwarding address in writing. This section of the tenant's application is therefore dismissed.

As the tenant's application has some merit I find the tenant is entitled to recover the filing fee of **\$100.00** 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 **\$750.00** pursuant to s. 38(6)(b), 67 and 72(1) of the *Act*. 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.

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: May 09, 2017

Residential Tenancy Branch