



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on June 23, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord return all or part of the security deposit or pet damage deposit.

The Tenant attended the hearing on her own behalf and was assisted by K.D., an advocate. The Tenant provided a solemn affirmation at the beginning of the hearing. The Landlord did not attend the hearing.

The Tenant testified the Application package was served on the Landlord by registered mail on July 4, 2017, although K.D. confirmed that tracking information confirmed it was not accepted by the Landlord. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Landlord is deemed to have received the Application package on July 9, 2017. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant confirmed the tenancy began on May 29, 2014, and ended when she moved out of the rental unit on March 9, 2016. At the end of the tenancy, rent was due in the amount of \$1,200.00 per month. The Tenant paid a security deposit of \$600.00, which the Landlord holds.

The Tenant claimed to be entitled to the return of double the amount of the security deposit, or \$1,200.00. She testified that she provided the Landlord with a forwarding address writing the day after moving out of the rental unit, on March 10, 2016. Further, the Landlord was subsequently provided with the Tenant's forwarding address in writing by letter dated October 7, 2016, which was sent to the Landlord by regular mail. A copy of the letter was submitted with the Tenant's documentary evidence. However, the Tenant testified that the Landlord has not repaid the security deposit to her.

In addition, the Tenant claimed to be entitled to compensation equivalent to double the monthly rent payable under the tenancy agreement, or \$2,400.00, pursuant to section 51 of the *Act*. Specifically, the Tenant received a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated December 1, 2015 (the "2 Month Notice"). A copy of the 2 Month Notice was submitted with the Tenant's documentary evidence. The 2 Month Notice was issued on the following basis:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

[Reproduced as written.]

The Tenant testified to her belief that the Landlord sold the rental property. In support, she advised that when she returned to the rental property on March 10, 2016, she saw the Landlord there with the alleged purchasers. She testified that she has returned to the property on a number of occasions since then, most recently on October 31, 2017, and observed that the alleged purchasers are still at the property. The Tenant confirmed that she never saw a for-sale sign posted at the rental property.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenant's claim for double the amount of the security deposit, section 38(1) of the *Act* requires a landlord to repay the security deposit or make a claim against it by filing an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. In this case, the Tenant testified, and I find, that the Landlord was provided with her forwarding address in writing by letter dated October 7, 2016. K.D. confirmed the letter was sent to the Landlord by regular mail. Pursuant to sections 88 and 90 of the *Act*, documents served by regular mail are deemed to be received five days later. I find the Landlord is deemed to have received the letter, which included the Tenant's forwarding address in writing, on October 12, 2016. Accordingly, the Landlord had until October 27, 2016, to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither. Accordingly, I find the Tenant is entitled to recover double the amount of the security deposit held by the Landlord, or \$1,200.00, pursuant to section 38(6) of the *Act*.

With respect to the Tenant's claim for compensation in the amount of \$2,400.00, section 51(2) of the *Act* states:

In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[Reproduced as written.]

I find there is insufficient evidence before me to conclude the Tenant is entitled to the relief sought. The Tenant testified to her belief that the people she saw at the rental property were purchasers, not close family members of the Landlord. However, the Tenant confirmed she did not see a for-sale sign posted at the property, and her oral testimony suggesting the property was sold was not supported by documentation such as a title search print. Neither, for example, did the Tenant provide testimony to the effect that a discussion with the alleged purchasers confirmed her belief the rental property had been sold. Accordingly, this aspect of the Application is dismissed, without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,200.00.

Conclusion

I grant the Tenant a monetary order in the amount of \$1,200.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 12, 2017

Residential Tenancy Branch