Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDCT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for the return of the security deposit. At the hearing the Tenant clarified that she is seeking compensation of $550.00 because she was served with a Two Month Notice to End Tenancy for Landlord's Use of Property and she understands she is entitled to one month's free rent.

The Tenant stated that sometime in November of 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, at the service address noted on the Application. In the absence of evidence to the contrary I find that these 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 documents were properly served to the Landlord, the hearing proceeded in the absence of the Landlord.

On March 13, 2018, April 26, 2018, May 02, 2018, and May 14, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to her sometime in 2018. I find that the service of this evidence serves to corroborate the Tenant's testimony that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord.

On December 11, 2017 the Tenant submitted 13 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, in January or February of 2018. In the absence of evidence to the contrary I accept that this evidence was served to the Landlord and it was accepted as evidence for these proceedings.

On January 11, 2018 the Tenant submitted 8 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, in February or March of 2018. In the absence of evidence to the contrary I accept that this evidence was served to the Landlord and it was accepted as evidence for these proceedings.

Preliminary Matter

The Tenant provided two addresses for this rental unit in the Application for Dispute Resolution. She stated that when she lived there she believed the street numbers were 5391. She stated that when the Landlord served her with a Notice to End Tenancy the Landlord identified the rental unit with the street numbers 5491. She stated that she used both numbers of the Application for Dispute Resolution because she was not certain of the correct address, although she believes the correct address is 5391.

The tenancy agreement submitted in evidence by the Landlord identifies the street numbers of the rental unit as 5391. I will, therefore, amend this Application for Dispute Resolution to show that the street numbers of the rental unit are 5391.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence:

The Tenant stated that:

- the tenancy began on September 01, 2016;
- was $550.00 plus $50.00 for utilities;
- a security deposit of $275.00 was paid;
- on September 12, 2017 the Landlord served her with a Two Month Notice to End Tenancy for Landlord's Use of Property;

- this Notice to End Tenancy declared that she must vacate the rental unit by November 31, 2017;
- on September 20, 2017 she posted written notice on the Landlord's door, in which she informed the Landlord that she would be vacating the rental unit on September 30, 2017;
- she vacated the rental unit on September 30, 2017;
- the Tenant provided a forwarding address, by text message, although she does not recall the date of service;
- she knows the Landlord received the forwarding address, via text message, as the Landlord submitted a screen shot of that message with her evidence;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that the Landlord did not schedule a time to inspect the rental unit at the start of the tenancy; the unit was not jointly inspected at the start of the tenancy; and that a condition inspection report was not completed at the start of the tenancy. In the Landlord's written submissions I could find no reference to an inspection being scheduled or completed at the start of the tenancy.

The Tenant stated that the Landlord did not schedule a time to inspect the rental unit at the end of the tenancy; the unit was not jointly inspected at the end of the tenancy; and that a condition inspection report was not completed at the end of the tenancy. In the Landlord's written submissions she declared that the Tenant refused to participate in a final inspection of the rental unit; however I could find no reference to the Landlord serving the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection.

The Tenant is seeking the return of double her security deposit.

At the hearing the Tenant clarified that she is seeking compensation that is the equivalent of one month's rent because she was served with a One Month Notice to End Tenancy for Landlord's Use of Property.

In her written submission the Landlord declared that she does not use the front door of her residence and she never located the notice to end the tenancy that the Tenant allegedly posted on her door. She declared that she did not receive the Tenant's written notice of her intent to end the tenancy until October 05, 2017. She stated that this notice declared the Tenant was vacating the rental unit at the end of September.

Both parties submitted a copy of the Tenant's notice to end tenancy. This notice is dated September 20, 2017 and declares that the Tenant will be vacating the unit on September 30, 2017.

The Landlord contends that since she did not receive proper notice that the tenancy was ending on September 30, 2017, the Tenant was obligated to pay rent for October of 2017. She contends that since the Tenant did not pay rent for October of 2017, she has been sufficiently compensated for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

Analysis:

On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, served pursuant to section 49 of the *Act*, which declared that the Tenant must vacate the rental unit by November 31, 2017, although there are only 30 days in

November.

Section 50(1)(a) of the *Act* stipulates that if a landlord gives a tenant notice to end a periodic tenancy under sections 49 or 49.1 of the *Act,* the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

As the Tenant was served with a notice to end tenancy pursuant to section 49 of the *Act*, I find that the Tenant had the right to end this tenancy by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, pursuant to section 50(1)(a) of the *Act.*

Section 88(g) of the *Act* permits a tenant to serve notice to end a tenancy by posting it in a conspicuous place at a landlord's residence. On the basis of the undisputed testimony of the Tenant I find that on September 20, 2017 she posted written notice on the Landlord's door, in which she informed the Landlord that she would be vacating the rental unit on September 30, 2017.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed received on the third day after it is posted. The deeming provisions of this section are rebuttable. On the basis of the written declaration of the Landlord I find that she never received the notice to end tenancy that was posted on her front door, as she does not typically use that that door.

I find that both parties could be telling the truth regarding posting of the notice to end tenancy. I find it entirely possible that the notice to end tenancy the Tenant posted on the door on September 20, 2017 was removed by a third party or was somehow dislodged by natural elements.

On the basis of the written submission the Landlord I find that she received the Tenant's notice to end tenancy on October 05, 2017.

Section 53(1) of the *Act* stipulates that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the *Act*, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Section 53(2) of the *Act* stipulates that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

As the Tenant had the right to end this tenancy with ten days' notice, pursuant to section 50(1)(a) of the *Act*; the Tenant gave the Landlord written notice that she was ending the tenancy on September 30, 2017; and that Tenant's written notice was dated September 20, 2017 I find that the Landlord should have understood that the Tenant was providing her with notice that she was ending her tenancy in ten days. As the Landlord acknowledged receiving the Tenant's notice to end tenancy on October 05, 2017, I find that the effective date of the Tenant's notice to end tenancy was October 15, 2017, pursuant to section 53(2) of the *Act*.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* 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. As the Tenant was served with a notice to end tenancy pursuant to section 49 of the *Act*, I find that the Tenant is entitled

to compensation in an amount that is the equivalent of one month's rent payable under the tenancy agreement, which is $550.00.

Section 51(1.1) of the *Act* stipulates that a tenant who is entitled to receive the equivalent of one month's rent pursuant to section 51(1) of the *Act* may withhold the amount authorized from the last month's rent. Pursuant to section 51(1.1) of the *Act*, I find that the Tenant had the right to withhold the rent of $275.00 that was due for the period between October 01, 2017 and October 15, 2017, pursuant to section 53(2) of the *Act*.

As the Tenant is entitled to $550.00 in compensation, pursuant to section 51(1) of the *Act* and she received the equivalent of $275.00 by withholding it from rent for the period between October 01, 2017 and October 15, 2017, I find that the Landlord still owes her $275.00.

Section 23(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(3) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 17(2)(b) of the *Residential Tenancy Regulation* stipulates, in part, that a landlord must propose a second time for an inspection, in the approved form. Section 10(1) of the *Act* stipulates that the director may approve forms for the purposes of this *Act.* RTB-22 (Notice of Final Opportunity to Schedule a Condition Inspection) is the form the director has created for the purposes of scheduling a final inspection.

On the basis of the undisputed evidence I find that the Landlord did not schedule a time to jointly inspect the rental unit at the start of the tenancy; the rental unit was not jointly inspected at the start of the tenancy, and a condition inspection report was not completed at the start of the tenancy.

Section 24(1) of the *Act* stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with section 23 (3) of the *Act* and the tenant has not participated on either occasion.

As there is no evidence that the Landlord offered the Tenant two opportunities to participate in an inspection of the rental unit at the start of the tenancy and that one of those opportunities was provided on a Notice of Final Opportunity to Schedule a Condition Inspection, I can find no reason to conclude that the Tenant extinguished her right to the return of the security deposit.

Section 35(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

Section 35(3) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. RTB-22 (Notice of Final Opportunity to Schedule a Condition Inspection) is the form that must be used to offer the second opportunity for an inspection, in accordance with section 17(2)(b) of the *Residential Tenancy Regulation.*

Section 36(1) of the *Act* stipulates that the right of a tenant to the return of a security deposit or a pet

damage deposit, or both, is extinguished if the landlord has complied with section 35 (3) of the *Act* and the tenant has not participated on either occasion.

As there is no evidence to suggest that the Landlord offered the Tenant two opportunities to participate in an inspection of the rental unit at the end of the tenancy and that one of those opportunities was provided on a Notice of Final Opportunity to Schedule a Condition Inspection, I can find no reason to conclude that the Tenant extinguished her right to the return of the security deposit.

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.

On the basis of the testimony of the Tenant, I find that the Tenant provided the Landlord with a forwarding address by text message. As the Landlord submitted a screen shot of this text message with her evidence package, I find that the Landlord received this text message and that she received the Tenant's forwarding address, in writing.

In determining that the Landlord received the Tenant's forwarding address, in writing, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord received the text message in which the Tenant provided her forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address.

I was unable to locate a date on the aforementioned text message. Although the dates of subsequent text messages exchange by the parties is not entirely clear, it appears that subsequent text messages were exchanged on October 01, 2017 and October 02, 2017. I therefore find it reasonable to conclude that the Landlord received the Tenant's forwarding address, in writing, by October 01, 2017.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit.

Conclusion:

The Tenant has established a monetary claim of $825.00, which includes double the security deposit of $275.00 and $275.00 in compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily 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.

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: June 13, 2018

Residential Tenancy Branch