



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This decision pertains to the Tenant's application for dispute resolution made on April 20, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks a monetary order for the return of a security deposit, and for compensation for monetary loss or money owed for a partial rent payment.

The Tenant and the Landlord (M.H.) attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both parties acknowledged receiving, and having sufficient time to review, all documentary evidence.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for the return of a security deposit?
2. Is the Tenant entitled to a monetary order for compensation for monetary loss or money owed for a partial rent payment?

Background and Evidence

The Tenant testified that they entered a one-year, fixed term tenancy on February 1, 2017, and vacated the rental unit on March 18, 2018. The tenancy converted to a periodic tenancy after January 31, 2018. Monthly rent was \$2,300.00, due on the first of the month, and the Tenant paid a security deposit of \$1,150.00.

The Tenant gave the Landlord a letter, dated March 9, 2018, in which they gave ten

days' notice that they intended to move out (the "Notice"). The Notice, submitted into evidence, included the Tenant's forwarding address. The Landlord did not dispute this evidence or the Tenant's testimony regarding the Notice.

The Tenant testified that they also sent the Landlord the Notice by registered mail on March 9, 2018. However, the Tenant submitted into evidence a photograph of the Notice and Canada Post registered mail tracking number, and a receipt, which show that the Notice was mailed on April 20, 2018. The registered mail tracking number website indicates that the Notice was picked up by the Landlord T.H. on April 25, 2018.

The Tenant testified that the Landlord gave them a letter on October 27, 2017, in which the Landlords notified them that they would be using the rental unit for personal use sometime in the Fall of 2018. The Tenant read from the letter, which did not appear to conform to the form and notice requirements under section 52 (e) of the Act. I note that the Tenant did not submit a copy of the letter, and the Landlord did not dispute the content of the letter as read by the Tenant.

The Tenant testified that they paid \$450.00 for partial rent for March 2018, and moved out on March 18. They submitted that, because the Landlord intended to use the rental unit for their own use, the Tenant is entitled to the last month's rent free. As such, they are claiming for compensation in the amount of \$450.00 that was paid as partial rent.

The Landlord testified that they gave the Tenant "lots of notices," including a 10 Day Notice for Unpaid Rent (the "10 Day Notice") for the remaining \$1,850.00 in unpaid rent for March 2018. The 10 Day Notice was dated March 10, 2018, posted on the Tenant's door on March 11, 2018, and effective March 25, 2018. The Landlords have not made an application for dispute resolution in respect of the unpaid rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Return of Security Deposit

Section 38 (1) of the Act, "Return of security deposit and pet damage deposit" states:

Except as provided in subsection (3) of (4) (a), within 15 days after the later of (a) the date the tenancy ends, or (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Subsection 38 (6) states that where a landlord fails to comply with section 38 (1), the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

The Tenant testified, and submitted supporting documentary evidence, that the Landlord received the Tenant's forwarding address on March 9, 2018. The Landlord did not dispute this. Further, there is no evidence to suggest that the Landlords applied for dispute resolution within 15 days of receiving the Tenant's forwarding address.

Therefore, taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find the Tenant has met the onus of proving their case that they are entitled to a return of the security deposit. I further find that the Landlords have not complied with section 38 (1) of the Act and, pursuant to section 38 (6) (b), must pay the Tenant double the amount of the security deposit for a total of \$2,300.00.

Claim for Partial Rent Refund

Rent was \$2,300.00. The Tenant paid partial rent of \$450.00 for the period March 1-18, 2018. The Tenant claims that they are entitled to one month free because of the Landlords' pending use of property.

I note that the Landlords' "notice" to eventually use the property for their own use does not comply with section 52 ("form and content of notice to end tenancy") of the Act, and as such I find this notice to be invalid. The Tenant was not required to vacate the rental unit as no actual 2 Month Notice to End Tenancy was issued by the Landlords.

The tenancy on March 9, 2018, was a periodic tenancy. Under section 45 (1) of the Act, 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 did not provide sufficient notice to the Landlords as required by section 45 (1) of the Act. As such they are not entitled to a refund of any of the partial rent paid. On the contrary, the Tenant was legally required to pay rent for the entire month of March 2018, which they did not. The balance of the rent for March is \$1,850.00.

Therefore, taking into consideration all the evidence and testimony presented before me, and applying the law to the facts, I find that the Tenant has not met the onus of proving on a balance of probabilities that they are entitled to a monetary order for compensation from the Landlords for a refund of the partial rent payment.

Conclusion

The Tenant is entitled to a monetary order in the amount of \$2,300.00. This order must be served on the Landlords and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant is not entitled to a monetary order for compensation for monetary loss or money owed for a partial rent payment, and this claim is dismissed 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 Act.

Dated: June 19, 2018

Residential Tenancy Branch