



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 10, 2018 (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 granting recovery of the filing fee.

The Tenant attended the hearing at the appointed date and time, and provided affirmed testimony. The Landlords did not attend the hearing.

The Tenant testified the Application package was served on the Landlords by registered mail. It was sent to the Landlords' address for service as it appears on the tenancy agreement. Canada Post tracking information submitted by the Tenant confirmed receipt of the Application package. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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 recover the filing fee?

Background and Evidence

The Tenant submitted a copy of the tenancy agreement into evidence. It confirmed the tenancy began as a fixed-term tenancy on August 1, 2015, and then continued on a month-to-month basis after the end of the fixed term. During the tenancy, rent in the amount of \$1,650.00 was due on the first day of each month. The Tenant confirmed there are no outstanding issues with security or pet damage deposits.

The Tenant testified the tenancy ended after he provided written notice to the Landlord on August 28, 2018. A copy of an email exchange with the Landlord on that date was submitted into evidence. It confirmed that the Tenant had to vacate the rental unit on short notice but acknowledged an obligation to pay rent to September 30, 2017, which he did.

However, according to the Tenant, the Landlord deposited a post-dated rent cheque, dated October 1, 2017, in the amount of \$1,650.00. In support, the Tenant submitted a copy of the processed cheque. As evidenced by email messages submitted into evidence, the Tenant followed up with the Landlord to obtain a refund. However, the Landlord has not returned the rent overpayment.

The Landlord did not attend the hearing to dispute the Tenant's evidence.

Analysis

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

Section 45(1) of the *Act* states:

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.

[Reproduced as written.]

Further, section 5(4) of the Regulation states:

The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

[Reproduced as written.]

In this case, I find the Tenant gave notice to end the month-to-month tenancy on or before August 28, 2017. Therefore, I find the tenancy ended on September 30, 2017, and that the Tenant was obligated to pay rent to that date. However, I find the Landlord did not return the Tenant's post-dated cheques, but deposited the cheque dated October 1, 2017, contrary to section 5(4) of the Regulation.

In light of the above, I find the Tenant is entitled to a monetary award of \$1,650.00 for the rent overpayment. Further, having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,750.00, which is comprised of \$1,650.00 as a reimbursement of a rent overpayment and \$100.00 in recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,750.00. The monetary 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: October 23, 2018

Residential Tenancy Branch