



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On November 2, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting the return of the security deposit, a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

Preliminary Matters

The Tenant attended the conference call hearing; however, the Landlord did not attend at any time during the 67-minute hearing. The Tenant testified that she obtained an order from a Residential Tenancy Branch Adjudicator for substituted service to the Landlord in a Decision, dated November 16, 2018. The order stated the following:

The tenant may serve the landlord the Application for Dispute Resolution and Notice of Dispute Resolution hearing documents, with supporting documents and related evidence, along with a copy of this substituted service decision, by leaving the documents with a concierge of a building located at the address identified on the first page of this decision.

The Tenant stated that she provided the Landlord with the above documents by delivering the package to the substituted service address on November 19, 2018. The Tenant provided documentation that indicated that the concierge at the substituted service address signed for the package. As a result, I find that the Landlord has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Tenant.

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

Should the Tenant have her security deposit returned, in accordance with Section 38 of the Act?

Should the Tenant receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the Tenant, not all details of the respective submissions are reproduced here.

The Tenant provided the following undisputed evidence:

The one-year, fixed-term tenancy began on November 15, 2017, with a scheduled end date of November 30, 2018. The monthly rent was \$2,350.00 and the Landlord collected and still holds a security deposit in the amount of \$1,175.00. The Tenant stated she paid the security deposit on November 4, 2017 and submitted a receipt for the payment, as evidence.

The Tenant testified that she received an email from the Landlord on January 23, 2018, indicating that due to the Landlord's health condition as well as her family financial situation, that the Landlord was planning on selling the rental unit. The Landlord acknowledged that she had a fixed term tenancy with the Tenant and offered the Tenant \$5,000.00 to end the tenancy early and move to a new place.

The Tenant stated that there was a fair amount of conversation with the Landlord between January 23, 2018 and mid-May 2018 including discussions about the potential of buying the rental unit and arrangements with the Landlord to pay the Tenant for open

houses for the rental unit. The Tenant received \$3,000.00 from the Landlord for the various open houses.

The Tenant said that she obtained alternate housing for herself and on May 18, 2018, the Tenant emailed the Landlord and told her that she accepted the Landlord's offer to end the lease early for the payment of \$5,000.00 and said that she would move out of the rental unit by July 15, 2018.

The Landlord responded and indicated that the housing market had declined over the last three months and that she has had to decrease the asking price for the rental unit. The Landlord proposed that if the Tenant could vacate the rental unit on the first week of June 2018, she would pay the Tenant \$5,000.00, or by July 15, 2018, for the amount of \$3,000.00.

On May 19, 2018, the Tenant replied to the Landlord and declined the offer of \$3,000.00 and reminded the Landlord that she originally offered \$5,000.00 to end the lease. The Landlord did not respond.

The Tenant paid her rent for June 2018 rent and on June 29, 2018 mailed a letter to the Landlord to confirm that she, the Tenant, intended on moving out of the rental unit on July 12, 2018 and that she would provide the Landlord a pro-rated rent payment for July 2018.

The Tenant provided her forwarding address to the Landlord in a letter, dated July 11, 2018. This letter was received by the concierge on July 12, 2018, via registered mail at the service address the Landlord had provided, the same address that the Adjudicator subsequently approved for substitute service, in the Decision, dated November 16, 2018.

The Tenant stated that she met the Landlord at the rental unit on July 12, 2018, for the move-out inspection and to provide vacant possession of the rental unit. The Landlord stated the unit was clean; however, did not fill-out or provide the Tenant a move-out inspection report.

On July 13, 2018, the Tenant sent a letter to the Landlord, via registered mail, to confirm that fact that the Landlord attended to inspect the rental unit and that it was clean and undamaged.

The Tenant stated that the Landlord has not returned her security deposit. The Tenant is requesting the return of her security deposit and the \$5000.00 promised to her for ending the tenancy early upon the Landlord's request.

Analysis

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that they requested their \$1,175.00 security deposit and notified the Landlord of their forwarding address on July 12, 2018, in accordance with the Act.

I have no evidence before me that the Landlord returned the balance of the security deposit, reached written agreement with the Tenant to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit. For these reasons, I find the Landlord must reimburse the Tenant double the amount of the outstanding security deposit for a total of \$2,350.00, pursuant to Section 38 of the Act.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the Tenant's evidence that she entered into negotiations with the Landlord regarding a mutual agreement to end the tenancy. The Tenant provided evidence that she paid rent while she lived in the rental unit and stopped paying rent when she moved out. Upon review of the Tenant's testimony and evidence, I find that the Tenant agreed to move out of the rental unit, regardless of the Landlord choosing not to serve a Notice to End Tenancy. Furthermore, I find the Tenant failed to provide sufficient evidence that she incurred a monetary loss and that it stemmed from the Landlord's violation of the Tenancy Agreement or a contravention of the Act. As a result, I dismiss this part of the Tenant's claim.

I find that the Tenant's Application was, in part, successful and as such, I award the Tenant reimbursement for the filing fee, in the amount of \$100.00.

Conclusion

The Tenant has established a monetary claim, in the amount of \$2,450.00, which includes \$2,350.00 for the return of double the security deposit, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

I grant the Tenant a Monetary Order for the amount of \$2,450.00, in accordance with Section 67 of the Act. In the event that the Landlord does not 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: February 13, 2019

Residential Tenancy Branch