



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 19, 2018, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on November 20, 2019. The Landlord confirmed receipt. The Landlord testified that she served the Tenant with her documentary evidence by placing it through the Tenant's mail slot on February 7, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were 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 an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
3. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 15, 2016, however, the parties entered into a new fixed term agreement which took effect on July 1, 2017, and was meant to end on June 30, 2018. During the tenancy, rent in the amount of \$1,245.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$622.50 to the Landlord. The Tenancy ended on June 3, 2018. The Landlord submitted a copy of the tenancy agreement in support.

The Tenant is seeking compensation in the amount of \$2,490.00 in relation to a Two Month Notice for Landlord's Use (the "Two Month Notice") dated April 5, 2018, with an effective date of June 30, 2018. The Tenant stated that after receiving the Notice, she found a new place to live. The Tenant testified that she provided her notice to end tenancy to the Landlord on May 1, 2018, via email. The Landlord confirmed receipt. In the email, the Tenant indicating that she will be vacating the rental unit on June 1, 2018, and wished to apply the compensation equivalent to one month's rent to the month of May 2018. The Tenant submitted a copy of the email in support.

The Tenant testified that she understood the Two Month Notice to include compensation equivalent to two month's rent, therefore the Tenant is seeking compensation in the amount of \$2,490.00.

In response, the Landlord stated that the Tenant was bound to a fixed term tenancy, which prevents her from ending her tenancy early. Furthermore, the Landlord stated that the notice should have been submitted prior to May 1, 2018, for the notice to take effect at the end of May 2018. The Landlord stated that the tenancy ended on June 5,

2018, after the Tenant cleaned the rental unit and returned the keys. The Landlord stated that she applied the required compensation equivalent to one month's rent for the month of June 2018.

The Tenant has also sought the return of the security deposit. The parties agreed that the Tenant provided the Landlord with her forwarding address by email on July 13, 2018. The parties agreed that the Landlord repaid \$400.00 of the \$622.55 security deposit on July 16, 2018. The Tenant is seeking the remaining balance. The Landlord indicated that she retained the remaining balance of \$222.55 for cleaning of the rental unit. There is no evidence before me that the landlord has filed an Application for Dispute Resolution seeking to claim against the deposit.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

According to Section 45 of the Act, A tenant may end a fixed term 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,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *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.*

According to Section 50 of the Act, a tenant may end tenancy early following notice if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 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.

I accept that the parties entered into a fixed term tenancy which was meant to end on June 30, 2018. The parties agreed that the Tenant provided her notice to end tenancy to the Landlord on May 1, 2018, indicating that the tenancy will end on June 1, 2018. I find that the Tenant was not entitled to end the fixed term tenancy early pursuant to

Section 50 of the *Act*, as it only applies to periodic tenancies. For this reason, I find that the Tenant is responsible to pay rent up until the end of the fixed term, June 30, 2018.

According to Section 51(1) of the *Act* a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.

The parties agreed that the Landlord served the Tenant with a Two Month Notice dated April 5, 2018, with an effective date of June 30, 2018. I find that the Tenant received compensation in the amount of one month's rent which was applied to the last month of the tenancy, June 2018.

In light of the above, I find that the Tenant received the required compensation, pursuant to Section 51 of the *Act*, and is therefore not entitled to any further compensation.

With respect to the Tenant's claim for recovery of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days after receipt of a tenant's forwarding address, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the parties agreed that the Tenant provided the Landlord with her forwarding address via email, which was received by the Landlord on July 13, 2018. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until July 28, 2018, to repay the deposit or make a claim against it. The parties agreed that the Landlord returned \$400.00 of the security deposit to the Tenant on July 16, 2018. There is no evidence before me to indicate that the Landlord made an Application to retain the remaining portion of the security deposit in the amount of \$222.50.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord, less any amounts already received.

In this case, the Residential Tenancy Branch Policy Guideline #17 (the "Policy Guideline") requires the arbitrator to double the amount paid as a security deposit ($\$622.50 \times 2 = \$1,245.00$), then deduct the amount already returned to the Tenants ($\$1,245.00 - \$400.00 = \$845.00$), to determine the amount of the monetary order.

Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$945.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$945.00. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: March 8, 2019

Residential Tenancy Branch