



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, LRE, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. The tenant stated that the landlord was served with the submitted 4 photographs in the same package as the notice of hearing package served. The landlord disputed this claim stating that no photographs were received. The tenant's witness, S.M. stated that she was present and assisted the tenant in putting the photographs in the envelope and going with the tenant to mail it at Canada Post. Both parties confirmed that the landlord served her submitted documentary evidence via email on May 12, 2020. I accept the affirmed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package and the landlord's submitted documentary evidence package. On the tenant's disputed documentary evidence of 4 pictures, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord based upon the undisputed evidence of the witness. On this basis, I find that the landlord was properly served. As the landlord has stated that she is not in possession of these photographs, the landlord was notified

that during the hearing, if the tenant made reference to her evidence, then the landlord would be given as detailed a description on the relevant document and provided an opportunity to ask questions about it. Neither party made any other claims regarding service.

Preliminary Issue(s)

At the outset, the tenant's application was clarified. The tenant's requests were for the landlord to comply with the Act, Regulations or Tenancy Agreement and provided details on a \$500.00 security deposit, \$250.00 pet deposit and ½ month rent at \$550.00. The tenant requested a monetary claim of \$2,300.00 and provided details of "having to move with 2 children putting extra money out taking time off work." The tenant requested an order to suspend or set conditions on the landlord's right to enter giving the details "Not compliant to rental agreement". The tenant requested an order for the landlord to provide services or facilities required stating "It notified contract by the fact she did follow with repairs".

During the hearing both parties confirmed that the tenancy ended on April 1, 2020 which the landlord stated was confirmed by her agent on April 2, 2020. As such, as the tenancy has ended, the tenant's requests to suspend or set conditions on the landlord's right to enter and an order for the landlord to provide services or facilities are dismissed as there is no longer a tenancy.

During the hearing the tenant clarified that she was not seeking a monetary claim of \$2,300.00 as indicated on her application filed on March 27, 2020. The tenant stated with the assistance of her worker that she was only disputing the landlord's possible intent for unpaid rent. As such, this portion of the tenant's application is dismissed as it was made in error by the tenant.

The tenant has clarified that she now only seeks a monetary order for the claim of \$1,300.00 for return of the \$550.00 security deposit, \$250.00 pet damage deposit and return of \$550.00, ½ of the monthly rent for March 2020.

The landlord acknowledged her understanding and was prepared to proceed with the hearing.

During the hearing the tenant provided a mailing address for delivery of the decision as it was not provided during the application process.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a clarified monetary claim of \$1,300.00 which consists of:

\$500.00	Return of Security Deposit
\$250.00	Return of Pet Deposit
\$550.00	Return of ½ of monthly rent, March 2020

The tenant stated that the tenancy ended on April 1, 2020 after providing her notice to end the tenancy on March 7, 2020. The landlord confirmed receiving the notice via email arguing that the tenant had failed to provide proper 1 months' notice.

The tenant stated that her forwarding address in writing for return of the security and pet damage deposits were provided to the landlord via email on March 7, 2020 and again via email on March 19, 2020. The landlord confirmed receipt of the March 7, 2020 email but argued that it did not contain the tenant's forwarding address. Extensive discussions took place as the tenant referred to the landlord's evidence submission for proof of service but was unable to provide direction in locating the evidence to support her claim. The landlord referred to a file titled, "written_notice" which shows an envelope and handwritten letter dated March 4, 2020. A review of the last paragraph of this document shows that the tenant had provided a mail box address as claimed for return of her security deposit.

Both parties confirmed that the tenancy ended on April 1, 2020 and that the landlord currently holds the \$500.00 security and the \$250.00 pet damage deposits. The landlord stated that she has not filed an application for dispute of returning them.

The tenant also seeks return of \$550.00 for ½ of the monthly rent as she claims she was forced to vacate. The tenant also referred to the same notice "written_notice" which the tenant stated was provided to the landlord. The landlord argued that this notice to end the tenancy was mailed on March 28, 2020 as seen by the postmark on

the envelope and received by the landlord on April 1, 2020. The landlord stated that her agent confirmed that the tenant had indeed vacated the rental unit on April 2, 2020.

Analysis

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 that 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 claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed affirmed evidence of both parties that the tenancy ended on April 1, 2020. Both parties confirmed that the landlord currently holds the \$500.00 security deposit and the \$250.00 pet damage deposits. The landlord provided undisputed testimony that she did not file an application to dispute returning the combined deposits nor did the landlord have the tenant's consent to retain it. I also find that the tenant provided her forwarding address for return of the combined deposits as claimed in the letter dated March 4, 2020. The landlord provided undisputed evidence that this letter was mailed on March 28, 2020 and received via Canada Post on April 1, 2020. The landlord supported this claim through reference the post mark by Canada Post which shows that it was received by Canada Post for process on March 28, 2020.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security and/or pet damage deposit(s).

I find based upon the evidence provided that the tenant has established a claim for return of both the original \$500.00 security deposit and the \$250.00 pet damage deposits. The landlord received the tenant's forwarding address in writing requesting the return of the security and pet damage deposits on April 1, 2020. The landlord did not apply for dispute of returning the deposits nor did the landlord have the tenant's consent to retain them.

I also find that the landlord having received the tenant's forwarding address in writing for return of the \$500.00 security and the \$250.00 pet damage deposits in the tenant's letter dated March 4, 2020 on April 1, 2020 and that the tenancy ending on April 1, 2020 failed to return the combined deposits within the allowed 15 day period. The landlord failed to comply with section 38(1) of the Act. The landlord is required to pay an equivalent amount equal to the combined deposits of \$750.00 pursuant to section 38(6).

On the tenant's claim for return of ½ months rent equal to \$550.00, I find that the tenant has failed to establish a claim. Both parties confirmed the tenancy ended on April 1, 2020 and that the tenant had ended the tenancy without giving the landlord one months' clear notice as required.

The tenant has established a total monetary claim of \$1,500.00 for return of double the security and pet damage deposits.

Conclusion

The tenant is granted a monetary order for \$1,500.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: May 25, 2020

Residential Tenancy Branch