Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order, and to recover the filing fee from the Landlord for the cost of filing this application. The Tenant's Application for Dispute Resolution was amended to reflect the Landlord's proper name, as provided by the Landlord at the hearing.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted no evidence. The Tenant submitted documents to the Residential Tenancy Branch. The male Landlord stated that he left copies of those documents outside the Landlord's residence sometime "last week"; that he advised the Landlord of their presence, via text message; that the Landlord advised him, via text message, that he could not locate the documents; that he left them outside the Landlord's residence again.

The Landlord stated that he received these documents on October 25, 2011. He requested an adjournment for the purposes of reviewing the documents provided by the Tenant. Upon reviewing the documents I determined that it was possible this dispute could be resolved without relying on the documents submitted in evidence. The parties were advised that the hearing would proceed and that I would consider an adjournment if, at some point in the hearing, it appeared necessary to consider the documents submitted in evidence.

The Tenant was advised that other monetary claims outlined in the Tenant's evidence package that was received by the Landlord during the latter portion of October are not being considered, as the Tenant did not properly amend the Application for Dispute Resolution in a manner that clearly informs the Landlord that the application for a monetary Order has been increased from $3,000.00 to more than $12,000.00. I find that including this information within documents submitted in evidence does not serve as proper notice of an amendment. Rather, the Tenant must clearly change the amount on the Application for Dispute Resolution, to ensure the Landlord is made aware of the increase.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of the security deposit paid in relation to this tenancy, compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and to recover the cost of filing this Application for Dispute Resolution, pursuant to sections 38, 52, and 72(1) of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that they entered into a written tenancy agreement that began on July 01, 2010; that the Tenant moved property into the rental unit prior to the start date of the tenancy; that the Tenant was required to pay rent of $2,000.00 by the first day of each month; and that the Tenant paid a security deposit of $1,000.00.

The Landlord and the Tenant agree that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act.* The Landlord amended the Notice to indicate it is a 3.5 Month Notice to End Tenancy. The Tenant believes the Notice was served on the morning of June 12, 2011 and the Landlord does not recall the date of service. This Notice required the Tenant to vacate the rental unit by September 30, 2011.

The Landlord and the Tenant agree that the Landlord served the Tenant with a second Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act.* The Tenant believes the Notice was served later in the day on June 12, 2011 and the Landlord does not recall the date of service. This Notice required the Tenant to vacate the rental unit by August 31, 2011.

The male Tenant stated that on June 22, 2011 a letter was placed in the mail box of the rental unit, which is where the Landlord received mail and that a text message and email were left for the Landlord advising him that a letter had been left for him. The male Landlord stated that he did receive a message about the letter; that he did not receive the message until June 25, 2011, as he had been out of town; and that he did not pick up the letter until June 28, 2011 or June 29, 2011.

The Landlord and the Tenant agree that in the aforementioned letter the Tenant advised the Landlord that the Tenant intended to vacate the rental unit on July 02, 2011 and that it provided the Landlord with a forwarding address.

The parties agree that rent was paid for June of 2011; that the Tenant vacated the rental unit on July 02, 2011; and that no rent was paid for July.

The Landlord and the Tenant agree that the Tenant has not yet received compensation for being served with a Notice to End Tenancy pursuant to section 49 of the *Act.*

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

At the hearing the male Tenant stated that he wishes any monetary Order to be reduced by the following amounts:

- $69.99 to replace a missing steam cleaner
- $29.99 to replace a missing garage door opener
- $3.99 to replace a missing key
- $25.00 in compensation for a small carpet stain in the living room
- $21.49 to replace the blinds in the master bedroom
- $140.00 to repair damage to the basement walls caused by affixing stickers.
- $64.00 for a water bill.

Analysis

On the basis of the undisputed oral evidence presented at the hearing, I find that the parties had a tenancy agreement that required the Tenant to pay rent of $2,000.00 by the first day of each month and that the Tenant paid a security deposit of $1,000.00.

On the basis of the undisputed oral evidence presented at the hearing, I find that Tenant was served with two Notices to End Tenancy served pursuant to section 49 of the *Act,* one of which declared that the Tenant must vacate by August 31, 2011 and one of which declared the Tenant must vacate by September 30, 2011.

On the basis of the testimony of the male Tenant and in the absence of evidence to the contrary, I find that on June 22, 2011 the Tenant left a letter a mail box located at the rental unit, which was typically used by the Landlord to receive mail. On the basis of the testimony of the male Landlord and in the absence of evidence to the contrary, I find that the Landlord physically received this letter on June 28, 2011 or June 29, 2011.

On the basis of the testimony of the male Landlord, I find that the Landlord received a message regarding the existence of the letter on June 25, 2011. Although the Tenant contends that a message was sent to the Landlord on June 22, 2011, I note that the Tenant submitted no evidence to show that the Landlord received the message prior to June 25, 2011.

Section 90(d) of the *Act* stipulates that a document left in a mail box is deemed received on the third day after it was left, which in these circumstances in June 25, 2011. I find that the Landlord is deemed to have received the aforementioned letter on June 25, 2011, for the purposes of providing notice to end the tenancy and for receiving the Tenant's forwarding address. Although the Landlord contends that he did not physically receive it until June 28, 2011 or June 29, 2011, I find that receipt of notice to end a tenancy cannot be dependent on the Landlord's decision to delay retrieving his

mail or because he was out of town.

Section 50(1) of the *Act* specifies that if a landlord gives a tenant notice to end a periodic tenancy under section 49 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, and paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier that the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. As the Tenant's written notice to end the tenancy was deemed received by the Landlord on June 25, 2011, I find that the effective date of this written notice was July 05, 2011, which is ten days later. I therefore find that the Tenant was obligated to pay rent for five days in July, in the amount of $322.55, calculated at a daily rate of $64.51.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 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. As the Tenant received notice to end a tenancy under section 49 of the *Act*, I find that the Tenant is entitled to compensation in the amount of $2,000.00, which is the equivalent of one month's rent, less the $322.55 the Tenant was obligated to pay in rent for July.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit that was paid.

Conclusion

I find that the Tenant has established a monetary claim of $3,727.45, which is

comprised of double the security deposit, $1,677.45 in compensation pursuant to section 51 of the *Act*; and $50.00 as compensation for the cost of filing this Application for Dispute Resolution.

After deducting the amounts the Tenant wishes to pay to the Landlord for damage to the rental unit, I find that the Tenant is entitled to a monetary Order in the amount of $3,372.99. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: October 26, 2011.

Residential Tenancy Branch