



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Verbano Ent. 1999
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD and MNDC

Introduction

This hearing was convened on the tenant's application of January 25, 2013 seeking a monetary order for return of her security deposit and the equivalent of one month's rent granted by section 51 of the *Act* to tenants who receive a two-month Notice to End Tenancy for landlord use.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order as request and, if so, in what amount?

Background and Evidence

This tenancy ran from February 1, 2000 to November 30, 2011, ending on a two-month Notice to End Tenancy for landlord use served September 1, 2011 when the landlord required vacant possession to do major repairs.

Rent was \$810 at the end of the tenancy and the landlord holds a security deposit of \$375 paid on February 7, 2000.

During the hearing, the tenant gave undisputed evidence that the landlord had not returned her security deposit and had not reimbursed one-month's rent as required under section 51 of the *Act*.

The landlord stated that he had not been able to return the funds as he had not been provided with the tenant's forwarding address.

The tenant stated that she had placed a note including her forwarding address in the same mail box in which she had customarily placed her rent cheques over the eleven-year tenancy.

The landlord also stated that he had some question as to whether the tenant was entitled to the one-month free rent payment because, when she had been able to find new accommodation for November 1, 2011, they had, on October 24, 2011, signed a Mutual Agreement to End Tenancy to take effect on November 30, 2011.

Analysis

Section 38(1) of the *Act* provides that a landlord must return a tenant's security deposit or make application to make claim upon it within the latter of 15 days of the end of the tenancy or receipt of the tenant's forwarding address. If the landlord does not do so, section 38(6) of the *Act* requires that the landlord return the deposit in double.

Given that the landlord and tenant disagree as to whether the forwarding address was provided, and given that I have no written or corroborating evidence in support of either version, I must find that the tenant has not met the burden of proof that the address was provided. However, the parties agree that the landlord now has the forwarding address by virtue of the tenant's application and must return it with 15 days of this hearing.

I further find that the Mutual Agreement does not nullify the landlord's obligation under section 51 of the *Act* to pay the tenant the equivalent of one month's rent, due as a result of the notice to end tenancy for landlord use.

For one reason, the notice was served on September 1, 2011 with an end date of October 31, 2011. Such notice must be served on a day before the rent due date in order to take effect at the end of the second month following service. End dates are corrected automatically by section 53 of the *Act* and the notice in question would have been corrected to November 30, 2011. If that had not been the case, the landlord had stated during the hearing that agreed upon extension constituted a new tenancy. For that reason also, the mutual agreement would not have nullified the free month rent provision of section 51 of the *Act*.

Therefore, I find that the landlord must pay the tenant \$810 which is the equivalent of one month's rent.

Thus, I find that the landlord owes to the tenant an amount calculated as follows:

To return security deposit	\$ 375.00
Interest on security deposit (February 7, 2000 to date)	32.12
Equivalent of one-month's rent awarded by section 51 of the Act	<u>810.00</u>
TOTAL	\$1,217.12

Conclusion

The tenant's copy of this Decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$1,217.12**, for service on the landlord if necessary.

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: April 17, 2013

Residential Tenancy Branch

