



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Preliminary Issues

Section 58(1)(b) of the Act stipulates that a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect to the rights and obligations under the terms of their tenancy agreement.

Residential Tenancy Rule of Procedure 2.3 provides that claims made in one application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Residential Tenancy Policy Guideline 13 defines "Tenants in common" as tenants sharing the same premises or portion of premises who enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

Based on the evidence before me I find that the two Applicants to this dispute were tenants in common, each entering into a separate written tenancy agreement. Therefore, I conclude that these matters cannot be heard together under the same application as they relate to two separate tenancy agreements. The Tenants were given the choice on which application to proceed with during the June 18, 2015 hearing and they chose to proceed with D.S.'s application. Accordingly, I dismissed J.H.'s application with leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on October 24, 2014. The Tenant filed seeking to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Tenant who gave affirmed testimony. The Tenant provided documentary evidence that the Landlord was served notice of this application, the hearing and the Tenant's evidence by registered mail on October 27, 2014. Canada Post tracking information confirms that the

Landlord signed for the package on October 29, 2014. Therefore, I find the Landlord was sufficiently served Notice of this hearing and I continued in his absence.

Issue(s) to be Decided

Has the Tenant proven entitlement to a monetary order?

Background and Evidence

The Tenant submitted evidence that she entered into a written month to month tenancy agreement that began on September 1, 2014. Rent as per the tenancy agreement was \$600.00 per month and on July 16, 2014 the Tenant paid \$300.00 as the security deposit.

The Tenant testified that she gave notice to end her tenancy and vacated the property by September 30, 2014. She submitted that the Landlord preferred to communicate via text message and email and on September 21, 2014 at 1:48 p.m. she sent a text to the Landlord advising him of her forwarding address. The Landlord responded to that text message on September 30, 2014.

The Tenant asserted that they met with the Landlord on October 1, 2014 at the rental unit to return the keys. It was during that visit that the Landlord told her he had 15 days to return her security deposit. The Tenant submitted that the Landlord has not returned her deposit so she now seeks the return of double.

In support of her application the Tenant submitted documentary evidence which included, among other things, copies of: the tenancy agreement, several text messages between the parties, a monetary order worksheets, and receipts for the security deposit which was paid on July 16, 2014.

In closing the Tenant submitted that her address listed on the application was no longer her address. She requested that her service address, the address she provided to the Landlord on September 21, 2014, be listed on the front page of this Decision so that the Landlord was made aware that it was still her service address.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 44(1)(d) of the Act stipulates that the tenancy ends when the tenant vacates or abandons the rental unit; whichever is the earlier of the two.

Section 71 (2) (c) of the Act provides that the Director may make an Order that a document not served in accordance with section 88 or 89 of the Act, is sufficiently given or served for purposes of this Act.

Upon reviewing the foregoing and the documentary evidence before me I find the parties established that text messages were an acceptable form of written communication between them. I make this finding in part because text messaging was the primary method of communication between the parties. Furthermore, each party acted upon communications sent to each other by text message. Accordingly, I find text messages to be an acceptable form of service in this matter, pursuant to section 71(2)(c) of the Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Tenant vacated the unit by September 30, 2014. The Tenant provided her forwarding address via text message on September 21, 2014 and there was evidence that the Landlord received and responded to that text message on September 30, 2014. Therefore, I conclude that the Landlord was required to return the Tenant's security deposit in full or file his own application for dispute resolution no later than October 15, 2014. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

As per the foregoing, I find that the Tenant has succeeded in proving the merits of her application, and I award her double her security deposit plus interest in the amount of \$600.00 (2 x \$300.00 + \$0.00 interest), pursuant to section 38 of the Act. .

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with her application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

J.H.'s application has been dismissed with leave to reapply.

The Tenant, D.S., has succeeded with her application and has been awarded the return of double her security deposit of \$600.00 plus the \$50.00 filing fee.

The Tenant, D.S., has been issued a Monetary Order for **\$650.00** (\$600.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the 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: June 19, 2015

Residential Tenancy Branch

