



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This matter dealt with an application by the Tenant for a Monetary Order for the return of a security deposit as well as to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit?

Background and Evidence

This month to tenancy started on August 16, 2007 and ended on August 18, 2008. Rent was \$550.00 per month. The Tenant says he paid a security deposit of \$250.00 in cash at the beginning of the tenancy. The Tenant claimed the Landlord refused to accept payments from him by cheque and never gave him a receipt for the security deposit or for rent payments. The Tenant's witness, who is his brother-in-law, also gave evidence that he witnessed the Tenant paying the Landlord the security deposit in cash approximately one day prior to his move in date.

The Tenant said he sent the Landlord a copy of his forwarding address in writing by registered mail on October 23, 2008 and did not give his consent in writing to the Landlord to keep his security deposit.

The Landlord denied that the Tenant paid a security deposit. The Landlord admitted that the Tenant made all rent payments in cash, that he never issued the Tenant receipts and that he did not keep track of the rent that was paid. The Landlord claimed he was trying to help the Tenant (who was a new immigrant) and his family out by allowing him to pay what he could for rent and also claimed that the Tenant could not afford to pay a security deposit.

Analysis

I do not accept the Landlord's argument that he merely had an informal arrangement with the Tenant whereby the Tenant could reside in a suite that was not usually rented out and that he paid rent when he could. The lower portion of the rental property contains two suites. The one occupied by the Tenant is a self-contained living space with appliances and furniture. The Tenant claimed, and I find, that both basement suites in the rental property are rented out by the Landlord. Given the corroborating evidence of the Tenant's witness, I also find on a balance of probabilities that the Tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

Section 38(1) of the Act says that within 15 days of the later of the end of the tenancy or the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must either return the security deposit to the Tenant or file an application for dispute resolution to make a claim against it. If a Landlord fails to do either one of those things and does not have the Tenant's authorization in writing to keep all or part of it, then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant. I find that the Landlord received the Tenant's forwarding address 5 days after it was mailed (pursuant to s. 90 of the Act) or on October 28, 2008. Consequently, the Landlord had until November 12, 2008 at the latest to return the Tenant's security deposit or to apply for dispute resolution to make a claim against it.

I find that the Landlord has not returned the Tenant's security deposit and has not filed an application for dispute resolution to make a claim against it. As a result, I find the Tenant is entitled to recover double the amount of his security deposit or \$500.00 plus accrued interest of \$5.21. As the Tenant has been successful in this matter, he is also entitled to recover his \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$555.21** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.