



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit and recovery of the filing fee. The landlord and his agent appeared at the hearing and the tenant was represented by an agent at the hearing. Both parties were provided an opportunity to be heard and respond to other party's submissions.

I was provided evidence that there were two co-tenants; however, only one co-tenant has applied for return of the security deposit. With this decision, the other co-tenant is now precluded from making an application against the landlord with respect to return of the security deposit and the co-tenants will have the responsibility to apportion the security deposit among themselves.

Issue(s) to be Decided

1. Whether the landlord had the legal right to retain the tenant's security deposit.
2. Whether the landlord is obligated to pay the tenant double the security deposit.
3. Damages the tenant agrees to pay.
4. Award of the filing fee.

Background and Evidence

Upon hearing testimony of the parties, I find the following relevant facts concerning the tenancy. The landlord and two co-tenants entered a tenancy agreement on December 27, 2008 with the tenancy to commence January 1, 2009. The tenants paid a \$600.00 security deposit on December 27, 2008. The landlord did not prepare a move-in

inspection report at the commencement of the tenancy. The tenancy ended June 30, 2009. On July 6, 2009 the applicant tenant requested return of the security deposit and verbally provided the landlord's agent with two forwarding addresses, which the agent wrote down and confirmed with the tenant. The landlord's agent provided the landlord with the forwarding addresses. The landlord did not return the security deposit or make an application for dispute resolution within 15 days of receiving the forwarding addresses.

The tenant's agent testified that the tenant did not authorize the landlord to retain any part of the security deposit in writing and did not agree to make any deductions during this hearing.

The landlord was of the position that the rental unit was essentially brand new when the tenancy commenced and that after the tenancy ended the unit had to be cleaned and garbage removed. The landlord also stated that he did not receive proper notice to end the tenancy and that the other co-tenant had not returned the key to the rental unit.

Analysis

As the parties were informed during the hearing, the landlord's claims for cleaning costs or other damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to returning the security deposit. The landlord is at liberty to make a separate application for damages or loss.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages; however, the landlord loses the right to obtain the tenant's consent if the landlord fails to meet the move-in and move-out inspection report requirements. In this case, the landlord did not meet the move-in inspection report requirements. Therefore, the landlord could not have legally obtained the tenant's consent to made deductions for damages and the landlord was required to comply with section 38(1) of the Act.

Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

I find that the tenant provided his forwarding address to the landlord's agent, who in turn wrote it down, on July 6, 2009 and that the landlord had until July 21, 2009 to either repay the security deposit to the tenant or make an application for dispute resolution. Since the landlord did neither of these two options the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act.

In light of the above, the landlord did not have the legal right to retain the tenant's security deposit and the tenant has established an entitlement to return of double the security deposit. The tenant is awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenant \$1,250.00 and I provide the tenant a Monetary Order to serve upon the landlord. To enforce payment, the tenant may file the Monetary Order in Provincial Court (Small Claims) to enforce as an Order of that court.



Dispute Resolution Services

Page: 4

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As information for the landlord I have enclosed a copy of *A Guide for Landlords and Tenants in British Columbia*. The Guide provides information with respect to handling security deposits. Additional information may also be found from the Residential Tenancy Office website at www.rto.gov.bc.ca

Conclusion

The tenant was successful in this application and was awarded a Monetary Order in the total amount of \$1,250.00.

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: November 17, 2009.

Dispute Resolution Officer