Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double his security deposit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Issue

The Respondent argued that he is not the landlord and that he was improperly named on the Application for Dispute Resolution.

The Applicant stated that he named the Respondent on his Application for Dispute Resolution because most of his communications regarding this tenancy have been with the Respondent or the Property Manager; that the Respondent provided him a letter in which he advised him of the identity of the Property Manager; and that he paid his security deposit to the Respondent.

The Respondent acknowledged that he acted as the Landlord's representative at the outset and during this tenancy, however he contends that he is not named on the tenancy agreement as the landlord. The Respondent did not submit a copy of the tenancy agreement however the Property Manager had access to the tenancy agreement and he testified that the name of the individual who is identified on the tenancy agreement as the landlord is different from the name of the Respondent.

The Applicant stated that he no longer has a copy of the tenancy agreement and that the surname of the person named on the tenancy agreement as the landlord is vaguely familiar to him, but he has never met that person.

The *Residential Tenancy Act (Act)* defines "landlord", in part, as the owner of the rental unit or the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. Based

on the information provided by both parties, I am satisfied that the Respondent has acted as an agent for the landlord during this tenancy and that he is, therefore, a landlord as that term is defined by the *Act*. I therefore find that the Respondent was correctly named on the Application for Dispute Resolution.

In the absence of documentary evidence, such as a copy of the tenancy agreement, that clearly identifies the name of the owner of the rental unit or a letter from the owner of the rental unit, I decline to amend the Application for Dispute Resolution to include the owner as a Respondent to this Application for Dispute Resolution. In reaching this conclusion, I was strongly influenced by the Tenant's testimony that he does not know the identity of the owner of the rental unit and that he has never met the owner; that the Respondent is clearly acting as an agent for the landlord; and that the Respondent had ample opportunity to provide documentation regarding the identity of the owner of the rental unit.

Issue(s) to be Decided

The issue to be decided is whether the Applicant is entitled to the return of double the security deposit paid in relation to this tenancy.

Background and Evidence

The Applicant and the Respondent agree that this tenancy began in January of 2009; that it ended on August 27, 2009; that the Applicant was required to pay monthly rent of $500.00; and that the Applicant paid a $250.00 security deposit to the Respondent on January 07, 2009.

The Applicant and the Property Manager agree that the Applicant provided him with a forwarding address, in writing, sometime near the end of July of 2009.

The Property Manager stated that this was a fixed term tenancy that ended prematurely; that the Landlord retained $200.00 of the security deposit because the fixed term tenancy ended early; that on September 02, 2009 he advised "head office" to return the remaining $50.00 of the Tenant's security deposit; and that he assumes that the $50.00 was returned by head office, although he received no confirmation from "head office" that the $50.00 was returned.

The Respondent stated that he "believes" he spoke with an employee at "head office" who confirmed that $50.00 of the security deposit had been returned to the Applicant; that the Landlord did not submit any evidence to show that the $50.00 had been returned; and that the Landlord did not file an Application for Dispute Resolution in which the Landlord applied to retain any portion of the security deposit.

The Applicant stated that none of his security deposit was returned to him and that he did not give the Landlord permission to retain any portion of the security deposit.

The Applicant and the Respondent agree that a Condition Inspection Report was completed at the beginning of the tenancy and that a Condition Inspection Report was completed at the end of the tenancy. The Respondent stated that the Applicant signed the Condition Inspection Report that was completed at the end of the tenancy, in which the Applicant authorized the Landlord to retain a portion of the security deposit, in the amount of $200.00. The Applicant agreed that he did sign the Condition Inspection Report that was completed at the end of the tenancy, but he adamantly denies that his signature authorized the Landlord to retain a portion of the security deposit.

The Applicant stated that he did not receive a copy of the Condition Inspection Report that was completed at the end of the tenancy. Neither party submitted a copy of the Condition Inspection Report that was completed at the end of the tenancy

Analysis

On the basis of the undisputed evidence, I find that the Applicant paid a security deposit of $250.00 to the Respondent on January 07, 2009; that this tenancy ended on August 27, 2009; that the Applicant provided an agent for the Landlord with his forwarding address sometime in July of 2009; and that the Landlord did not file an Application for Dispute Resolution claiming against the security 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 established that the Landlord repaid any portion of the security deposit or filed an Application for Dispute Resolution.

I find that the Landlord has failed to establish that the Landlord returned any portion of the security deposit to the Applicant after this tenancy ended. In reaching this conclusion, I was strongly influenced by the Applicant's statement that none of his security deposit has been returned to him; by the absence of any documentary evidence, such as a cancelled cheque or a ledger statement that corroborates the Respondent's testimony that $50.00 of the security deposit was returned to the Applicant by a third party; and by the absence of evidence from the person who allegedly returned $50.00 to the Applicant.

I have no reason to conclude that the Landlord's obligation to comply with section 38(1) was negated by virtue of sections 38(2), 38(3), or 38(4) of the *Act.* I specifically find that the Landlord has failed to establish that the Landlord had the Applicant's written permission to retain any portion of the security deposit. In reaching this conclusion, I was strongly influenced by the Applicant's statement that his signature on the final Condition Inspection Report did not authorize the Landlord to retain a portion of the security deposit and by the absence of any documentary evidence, such as a copy of

the final Condition Inspection Report, that shows the Landlord received such written authorization.

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 Applicant double the security deposit that was paid, plus any interest due on the original amount.

Conclusion

I find that the Applicant established a monetary claim of $500.00, which represents double the amount of the security deposit, and I am issuing a monetary Order in that amount. 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: January 27, 2010.

Dispute Resolution Officer