

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of her security deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally by a third party to the Landlord. The Landlord confirmed receipt of the hearing package.

Both the Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant entered into a month to month tenancy on December 1, 2008 which ended on June 30, 2009 when the Tenant moved out of the rental unit and into another unit in the same rental building. Rent was payable on the first of each month in the amount of \$625.00 and the Tenant paid a security deposit of \$312.50 on December 1, 2008.

The Tenant was required to pay a separate security deposit of \$337.50 on July 1, 2009 for the new rental unit and a higher rent of \$675.00 per month because the second unit was in better condition than the first rental unit was.

The Tenant argued that tried several times to have her first security deposit returned and that it was not until she called the Landlord's boss that she received \$100.00 of the \$312.50 security deposit returned.

The Landlord testified and confirmed that she started her employment at this building in July 2009 and that she did not have access to the previous records of when the Tenant moved into her first rental unit.

The Landlord argued that she gave the Tenant until July 3, 2009 to clean the first rental unit but she did not do any cleaning. The Landlord confirmed that she did not issue written notices to the Tenant of two dates to attend the move-out inspection and she did not issue a final notice of the move-out inspection time. The Landlord testified that she conducted the move-out inspection on her own, in the Tenant's absence, and then took the form to the Tenant and requested that the Tenant signed the form.

The Tenant confirmed that she did not receive written notification that the Landlord would be conducting a move-out inspection.

The Landlord testified that she did not apply for dispute resolution to obtain an Order allowing her to retain the security deposit and the Landlord confirmed that she did not have the Tenant's permission, in writing, to keep the security deposit. The Landlord confirmed that she had the Tenant's forwarding address as of July 1, 2009 based on the new written tenancy agreement for the second unit in the same building.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

In this case the Tenant received a cheque for the return of \$100.00 for part of the security deposit, without interest. The Landlord has admitted that she did not apply for dispute resolution to keep the security deposit, did not have the Tenant's written consent to retain the security deposit, and had the Tenant's forwarding address in writing as of July 1, 2009.

I do not accept the Landlord's argument that the Landlord's violation was somehow excused due to the Tenant's alleged failure to clean the rental unit or comply with the *Act* or agreement. Even if the Tenant was found to be in violation of the *Act*, there is no provision in the *Act* that extends immunity for a reciprocal breach on the part of a Landlord.

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 Landlord was required to return the Tenant's full security deposit plus interest or file for dispute resolution no later than July 16, 2009. 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 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 and pet deposit and the landlord **must pay** the tenant double the amount of the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the balance of her security deposit and interest.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double Balance of Security Deposit (\$312.50 - \$100.00) x 2 =	\$425.00
Interest owed on the Security Deposit of \$312.50 from December 1, 2008 to February 23, 2010	0.40
TOTAL AMOUNT DUE TO THE TENANT	\$425.40

In regards to the Landlord's claims relating to damage or loss that she may have suffered, I am not able to hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlord is at liberty to file a separate application if the Landlord wants to pursue a claim.

I have included in both the Landlord's and Tenant's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage both parties to familiarize themselves with their obligations as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim in the amount of **\$425.40**. The Tenant may deduct the \$425.40 from their next monthly rent payable to the Landlord, leaving a balance due of \$249.60 for the month's rent.

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: February 23, 2010.

Dispute Resolution Officer