

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing. Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters:

The landlord advanced that the dispute address accommodation was a holiday vacation suite and therefore the Residential Tenancy Act does not apply. The landlord claims the rental unit was short term (for 5 weeks), furnished, provided towels, soap, laundry detergent, dishcloths, plates, pots and pans. The landlord also claims there was no written tenancy agreement and that the suite it was advertised in the 'Vacation rentals' on Craigslist, which linked the viewer to a web blog named '*vancouverholidayrental*'. This matter was finding was deferred pending reflection of the tenant' evidence.

Issue(s) to be Decided

Does the Residential Tenancy Act apply to this accommodation?

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me as testified by both parties, are as follows. The tenancy began October 24, 2009 and ended November 30, 2009. Rent was \$1800 per month, and the total rent paid, in advance for this period was \$2280. The landlord collected a security deposit of \$400 at the outset of the tenancy.

The parties disagree on whether they entered into a written tenancy agreement. The tenant provided a hand-written tenancy agreement dated October 23, 2009 and signed by both parties. The agreement provided contains the standard terms of a residential tenancy agreement. The landlord denies signing such an agreement, or the existence of such an agreement, and claims that they only gave the applicant a receipt for the full amount owed to November 30, 2009, and that the receipt included the word 'vacation'. The landlord did not have in their possession, nor submitted a copy of the receipt. The tenant, in contrast, provided a receipt dated October 23, 2009, purportedly signed by the landlord - for the amount of \$2280 + \$400 damage deposit. The tenant claims the tenancy was short term as it was intended to be in order for the tenant to establish a more permanent residence.

I do not have benefit of a start of tenancy, or end of tenancy inspection results or report, but the landlord referenced that at the end of the tenancy the landlord and tenant conducted a mutual inspection – at which time the landlord pointed out to the tenant some deficiencies and damage allegedly incurred by the tenant. The parties did not arrive at an agreement on the administration of the security deposit.

The tenant submitted a letter addressed to the landlord dated December 10, 2009 requesting the return of the damage deposit. The tenant provided evidence the letter was sent to the landlord by registered mail. The tenant's evidence displayed the tenant's mailing address on the exterior of the registered mail envelope. The tenant also provided evidence the landlord refused acceptance of the registered mail on December 11, 2009.

Analysis

On preponderance of the evidence, and on the balance of probabilities, **I find** the rental unit was a short term residential tenancy provided under a tenancy agreement for the period October 24 to November 30, 2009, and therefore within the jurisdiction of the Residential Tenancy Act (the Act). **I prefer** the tenant's testimony in respect to the circumstances, and I accept the tenant's evidence that a tenancy agreement was entered into by the parties, with provision for a \$400 security deposit to be returned at the end of the tenancy. I further accept the tenant's evidence that the tenant attempted to provide the landlord with their forwarding address in accordance with Section 88 of the Act – by registered mail - but that the landlord refused to accept the tenant's notification. As per Section 90 of the Act, the landlord is deemed to have received the tenant's forwarding address five (5) days after it was mailed.

Therefore:

Section 38(1) of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$400 and was obligated under section 38 to return this amount. The amount which is doubled is the original amount of the deposit. As a result, I find the tenant has established an entitlement claim for **\$800** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$850**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$850**. If necessary, this order may be filed in the 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*.