



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

Issues(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and if so, how much?
2. Is the Tenant entitled to recover an overpayment of rent?

Background and Evidence

This tenancy started on September 1, 2007 and ended on June 10, 2010 when the Tenant moved out. Rent was \$1,500.00 per month. The Tenant paid a security deposit of \$750.00 at the beginning of the tenancy.

The Tenant said he gave the Landlord his forwarding address in writing on July 6, 2010 when he put it in the Landlord's mail box together with a key. The Tenant said he did not give the Landlord written authorization to keep his security deposit. The Tenant also said that he paid rent for the month of June 2010 and the Landlord re-rented it for June 10, 2010. Consequently, the Tenant argued he is entitled to recover an overpayment of rent of \$1,000.00.

The Landlord said he issued the Tenant a cheque for \$789.25 on or about July 6, 2010 which represented the amount of the security deposit with accrued interest plus \$1,000.00 for June rent less \$1,003.75 for cleaning and repairs to the rental unit. The Landlord admitted that he did not have the Tenant's written authorization to keep the security deposit and he subsequently put a "stop payment" on the cheque he issued to the Tenant on or about July 6, 2010.

The Landlord argued that the new tenants moved in on June 12, 2010 (which the Tenant denied) and he only charged for ½ a month's rent to compensate them because they had to deal with the Landlord painting and making repairs.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit, I find that he did not specifically waive reliance on s. 38(6) of the Act.

I find that the Tenant paid a security deposit of \$750.00. I also find that the tenancy ended on June 10, 2010. Pursuant to s. 90 of the Act, the Landlord is deemed to have received the Tenant's forwarding address 3 days after it was put in his mail box or on July 9, 2010 and I find that he received it on that day. Consequently, the Landlord had until July 26, 2010 **at the latest** to either return **all** of the Tenant's security deposit or to make an application for dispute resolution to make a claim against the deposit.

The Landlord sent the Tenant a cheque for \$789.25 on or about July 6, 2010 which represented the balance owing after deducting \$1,003.75 from the sum of the Tenant's security deposit and rent overpayment. As this amount is roughly equivalent to the amount of the Tenant's security deposit and accrued interest, I find that he did initially comply with s. 38(1) of the Act. However, the Landlord subsequently put a stop payment on that cheque and as a result, I find that the Landlord *has not* complied with s. 38(1) of the Act by returning the Tenant's security deposit. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit (\$1,500.00) to the Tenant with accrued interest of \$15.07 (on the original amount).

Given that the Tenant paid rent for June 2010 in full and that the Landlord re-rented the rental unit for part of June 2010, I also find that the Tenant is entitled to recover an overpayment of rent. The Tenant said the new tenants moved in on June 10, 2010, however the Landlord claimed that they moved in on June 12, 2010 and paid for only ½ of a month's rent. I find that the new tenants were occupying the rental unit no later than June 12, 2010 and therefore I find that the Tenant is entitled to recover pro-rated



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rent for 19 days in the amount of \$950.00. In ordering the Landlord to repay this amount, I note that it was his choice to charge his new tenants a lesser rate of rent and he cannot pass off this choice on the Tenant. If the rent was reduced due to some fault of the Tenant, then the Landlord may apply for Dispute Resolution to recover a loss of rental income.

At the hearing, the Landlord sought to have a number of cleaning and repair expenses set off of the Tenant's claim, however without an application for Dispute Resolution from the Landlord to make a monetary claim against the Tenant's security deposit, there is no authority for me set off any amount on his behalf. Consequently, the Landlord must file a separate application for Dispute Resolution if he wishes to make a claim for compensation for those expenses.

In summary, I find that the Tenant has made out a monetary claim for \$2,465.07. As the Tenant has been successful in this matter, he is also entitled pursuant to s. 72 of the Act to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$2,515.07** 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.

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: December 15, 2010.

Dispute Resolution Officer