



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and compensation for loss or damage under the Act.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 24, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is the Tenant entitled to compensation for damage or loss under the Act and if so how much?

Background and Evidence

This tenancy started on April 1, 2007 as a month to month tenancy. The tenancy ended August 31, 2010. Rent was \$670.80 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$312.50 on March 19, 2007.

The Tenant said that she moved out of the rental unit on August 31, 2008 and gave the Landlord a forwarding address in writing on July 25, 2010. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that she cleaned the unit before leaving and he asked the Landlord for her deposit back. The Landlord said the rental unit was damaged so he did not return the security deposit. The Landlord continued to say that he took over the building in November of 2009 and he did not have any paper work on this tenancy, therefore he said he did not know if the security deposit was paid or not.

The Landlord also said he did not receive the evidence package so he would dispute this hearing. The Tenant said that she sent the evidence package to the Landlord by registered mail on January 7, 2011 and she viewed the tracking information which said the Landlord received it on January 10, 2011.

The Landlord said he did receive a forwarding address in writing from the Tenant on July 25, 2010 and he did not return the deposit or make an application with the *Residential Tenancy Branch* to retain the security deposit for damages to the rental unit.

The Tenant said she cleaned the unit before she left and she believes that the damages the Landlord is claiming are due to the previous tenancy. The Tenant provided photographs of the rental unit showing the type of damage to the unit and correspondence from the previous landlord saying the damage was from a previous tenancy.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (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;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

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

I find from that the Tenant did give the Landlord a forwarding address in writing on July 25, 2010. The Landlord did not return the security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$312.50 plus accrued

interest of \$8.44 from March 19, 2007 to January 18, 2011 the amount of \$320.94 X 2 = \$641.88.

In addition the Tenant has claimed for compensation for the hearing costs including postage, gas, phone and her time. These costs are not eligible claims under the dispute resolution process as they are costs of the hearing process. I therefore dismiss the Tenant's claims for \$312.50 for the costs of the hearing process.

As the Tenant was partially successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 and 72 a monetary order for \$691.88 will be issued to the Tenant. This Monetary order represents double the security deposit and accrued interest in the amount of \$641.88 and the filing fee of \$50.00.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$691.88 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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 18, 2011.

Residential Tenancy Branch