



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both the tenant and the landlord.

At the end of the hearing I requested the landlord provide additional documentary evidence regarding payments made to the landlord at the start of the tenancy. I ordered the landlord to submit the evidence to me and to the tenant no later than the end of business on Monday, January 31, 2011.

At the same time I order the tenant to provide any written response he might have to the landlord and myself no later than the end of business on Monday, February 7, 2011.

At 5:46 p.m. on January 31, 2011 a fax was sent to me from the landlord stating: "We have located the material you need and will be able to fax it to you tomorrow (Feb 01/11). It is with my son who is not currently in Vancouver. To date I have received nothing further from the landlord.

On Monday, February 7, 2011 I received a written statement dated February 4, 2011 from the tenant indicating that he had provided the landlord with his fax number on Monday January 31, 2011 at 10:19 a.m. by leaving him a voice mail and that to the date of his note he had not received any documentation from the landlord.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in June of 1993 as a month to month tenancy for a monthly rent at the end of the tenancy in the amount of \$2,126.00 due on the 1st of the month. The parties dispute whether or not a security deposit was paid. The tenant contends that his

wife paid a security deposit of \$750.00 and rent at the start of the tenancy was \$1,500.00, but that since his wife's death he has not been able to find any pertinent documents.

The landlord contends that no security deposit was paid and that he has documentation to show what was received by the tenants at the time. This evidence had not been submitted by the landlord prior to the hearing.

The parties agree that at or near the end of June 2010, when the tenancy ended the landlord and tenant did complete a walk through condition inspection. The tenant followed up with the landlord by phone on July 14, 2010 and provided his forwarding address at that time.

He further sent a letter to the landlord dated July 20, 2011 specifically referring to the conversation regarding the return of a security deposit and providing the landlord with the tenant's forwarding address in writing.

The tenant submits that he spoke again to the landlord on July 21, 2010 about the security deposit; washing machine; composter and a bill from an appliance company; that the landlord left him a message on September 1, 2010 but no mention of the security deposit; and that the tenant left another message for the landlord on September 10, 2010 but that there has been no other contact from the landlord.

Analysis

As the tenant's wife represented the tenants in the transactions between the landlord and tenants at the start of the tenancy and since the tenant cannot find any documentation from the time and the tenant's wife is not available to provide testimony, I must rely on the landlord's records to determine whether or not a security deposit was paid.

As the landlord, despite providing me with confirmation that he has found the records, has failed to submit them to the tenant and myself as I had ordered I must consider that the landlord is deliberately withholding these documents. I must, therefore, rely on the credibility of both parties testimony to determine if a security deposit was paid.

If I accept the tenant's undisputed testimony that the amount of rent at the start of the tenancy was \$1,500.00 and I assume that for 1993 this amount of rent was substantial I find it reasonable that the landlord would want, when renting out the unit, to protect himself from unanticipated damages or losses. As such, based on the balance of probabilities, I find it unlikely that the landlord would waive a security deposit on this rental unit.

Again, based on the tenant's undisputed testimony that rent at the start of the tenancy was \$1,500.00, I find it most likely that if a security deposit were required it would be in the amount of \$750.00

Further, I find the landlord failed to return this security deposit within 15 days of end of the tenancy and receipt of the tenant's forwarding address or submit an Application for Dispute Resolution to claim against the security deposit, as is required under Section 38(1) of the *Act*. As a result, I find the tenant is entitled to double the amount of the security deposit in accordance with Section 38(6).

Conclusion

For the reasons noted above I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,678.95** comprised of \$1,500.00 double the amount of the security deposit and \$178.95 interest held on the original security deposit amount (\$750.00).

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: February 08, 2011.

Residential Tenancy Branch