



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and for compensation equal to the amount of the security deposit due to the Landlords' alleged failure to return it as required by the Act.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") on or about November 4, 2010 by registered mail to their address for service set out on the tenancy agreement. Section 90 of the Act states that a document delivered in this way is deemed to be received by the recipient 5 days later. Consequently, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords' absence.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This tenancy started on March 1, 2009 and ended on August 31, 2010 when the Tenant moved out. Rent was \$1,200.00 per month. The Tenant paid a security deposit of \$600.00 at the beginning of the tenancy.

The Tenant said she gave the Landlords her forwarding address in writing on July 31, 2010 in a letter that also contained her written notice that she was ending the tenancy. The Tenant said the sister of the Landlord (C.D.) also resided in the rental property and acted as the Landlords' agent by collecting rent on their behalf from her each month. Consequently, the Tenant said she posted her letter dated July 31, 2010 on the Landlord's agent's door of her residence. The Tenant said she believed the Landlords received this document because they arranged with her to have new tenants move in early on the last day of her tenancy.

The Tenant said she did not give the Landlords written authorization to keep her security deposit and it has not been returned to her. The Tenant said she received a text message from the Landlord (B.P.) on September 14, 2010 who said he would not return her security deposit as a result of alleged damages to the rental unit. The Tenant

denied the alleged damages and argued that the Landlords did not have a right to keep her security deposit for alleged damages in any event because they did not give her a copy of the move in condition inspection report and did not complete a move out inspection report.

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 or she 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.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he or she may not keep the security deposit to pay for those damages.

Section 1 of the Act defines a Landlord (in part) as an "owner of a rental unit, the owner's agent or another person, who on behalf of the Landlord exercises powers and performs duties under the Act or tenancy agreement." I find that the sister of the Landlord (C.D.) was authorized to collect rent from the Tenant each month on the Landlords' behalf and as a result, I find that she acted as their agent. Consequently, I also find that the Tenant was entitled to serve her notice ending the tenancy and forwarding address on the Landlords' agent.

Section 90 of the Act says that a document that is posted on a door is deemed to be received 3 days later. Consequently, I find that the Landlords received the Tenant's forwarding address in writing on August 3, 2010 but have not return her security deposit. I also find that the Landlords 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. I further find that the Landlords' right to make an application for dispute resolution to make a claim against the security deposit was extinguished under s. 24(2) and s. 36(2) of the Act because they did not give the Tenant a copy of the move in condition inspection report and did not complete a move out condition inspection report. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit or \$1,200.00.

Conclusion

A Monetary Order in the amount of **\$1,200.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: March 08, 2011.

Residential Tenancy Branch