



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

The tenant applied requesting a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied requesting a monetary Order as compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to return of double the \$500.00 deposit paid?

Is the landlord entitled to compensation in the sum of \$800.00?

Is either party entitled to filing fee costs?

Background and Evidence

This was a 2 month fixed term tenancy that commenced on September 15, 2010 and ended on November 15, 2010. A tenancy agreement was signed; a copy was not supplied as evidence. A copy of a receipt issued for \$5,300.00 for 2 months rent and the deposit was submitted as evidence. Rent was \$2,400.00 per month and a \$500.00 deposit was paid.

The tenant stated he did not receive a copy of the tenancy agreement.

The landlord testified that a move-in condition inspection was completed; the tenant could not recall such an inspection. A move-out inspection was not completed as the landlord was at work at the time the tenant asked her to meet with him.

The landlord confirmed receipt on December 6, 2010, of a November 20, 2010, letter sent to her by the tenant requesting return of the deposit and providing a forwarding address.

The landlord applied for compensation on December 31, 2010; she did not claim against the deposit paid.

The landlord submitted that the tenancy agreement and advertisement for the rental unit indicated it was a non-smoking unit, but that the tenant smoked. The next occupant refused to move in as a result of the smell of smoke which forced the landlord to incur cleaning costs.

The landlord did not submit any evidence in support of her claim.

The tenant disputed the terms of the tenancy agreement; he did not receive a copy of the agreement and rented it because he would be allowed to smoke.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case the landlord has made a claim for damage or loss, but has not claimed against the deposit paid.

There is no evidence before me that a move-in condition inspection or move-out condition inspection was completed, as required by the Act. The landlord has not repaid the deposit as requested in writing by the tenant. Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the \$500.00 deposit paid to the landlord.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the

damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As the landlord did not provide any verification of her claim made, such as a copy of the tenancy agreement, the advertisement which prohibited smoking or evidence of cleaning costs, I find her claim is dismissed.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,050.00, which is comprised of double the \$500.00 deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$1,050. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord's claim is dismissed.

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: April 11, 2011.

Residential Tenancy Branch