



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. Only documentary evidence that was referred to at the hearing by either party will be referenced in this decision.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord stated that she and a roommate lived in this rental unit, for which they had a fixed term tenancy agreement with the owner of the premises. She stated that they wished to vacate the rental unit prior to the end of the fixed term lease so the rental unit was assigned to the Tenant.

The Landlord and the Tenant agree that the Landlord advertised the rental unit on a popular website; that they entered into a verbal agreement in which the Tenant would occupy for the rental unit for the remainder of the fixed term of the tenancy the Landlord had with the owner of the rental unit; that the Tenant provided the Landlord with four post-dated cheques, in the amount of \$1,000.00 each, that were made payable to the Landlord's former roommate's mother; and that the Tenant paid the Landlord a security deposit of \$500.00 prior to the start of the tenancy.

The Landlord and the Tenant agree that this tenancy ended on August 30, 2010. The parties agree that the Tenant provided the Landlord with his forwarding in an email that

was sent to the Landlord on September 01, 2010. The parties communicated frequently via email before and after this tenancy.

The Landlord and the Tenant agree that a condition inspection report was not completed at the start of their tenancy and that the Landlord, the Tenant, and the owner of the rental unit inspected the unit at the end of the tenancy. The parties agree that only the owner of the unit and the Landlord signed the condition inspection report at the end of the tenancy.

The Landlord stated that she believed the Tenant gave her authorization to retain part of the security deposit in an email he sent on September 18, 2010, in which he wrote "the hydro and whatnot is for sure reasonable".

The Tenant stated that he did not give the Landlord written or verbal authorization to retain any portion of the security deposit. The Tenant stated that he did not mean to imply that the Landlord could retain a part of his security deposit when he agreed that the hydro costs and "whatnot" were reasonable. He stated that he believes he made that clear to the Landlord in the email he sent on September 01, 2010, in which he advised her that he is "not very comfortable with him deducting utility costs and taxes from the deposit".

The Landlord and the Tenant agree that \$260.00 of the security deposit was returned to the Tenant on September 20, 2010, September 21, 2010, or September 22, 2010.

The Landlord and the Tenant agree that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

The *Act* defines a landlord, in part, as a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit, and exercises the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit. In my view the Respondent in this matter meets this definition of a landlord, as she had a fixed term lease that gave her legal possession of the rental unit, she entered into a verbal tenancy agreement with the Applicant, which required him to pay monthly rent of \$1,000.00 and a security deposit of \$500.00, and she did not live in the rental unit while the Applicant occupied the unit.

I find that the Landlord was exercising her rights as a landlord when she accepted monthly rent from the Tenant. I note that this monthly rent payment was given to the Landlord and not to the owner of the premises and that the cheques used for payment were not made payable to the owner of the premises.

I find that the Landlord was exercising her rights as a landlord when she accepted a security deposit from the Tenant. I note that this deposit was given to the Landlord and not to the owner of the premises and that the cheque used for payment was not made

payable to the owner of the premises.

As the Landlord exercised the rights of a landlord when she collected rent and a security deposit, I find that she was also compelled to comply with the responsibilities of a landlord.

The parties agree that the Tenant sent the Landlord his forwarding address, via email, on September 01, 2010. As the parties communicated regularly by email, I find that the Landlord received a written forwarding in address for the Tenant on, or about, September 01, 2010.

I find that the Landlord did not have written authority to retain any portion of the Tenant's security deposit. Although it is apparent that the Tenant agreed that some hydro charges were reasonable in an email sent on September 18, 2010, there is no mention that the Landlord can deduct those costs from his security deposit. As neither this email, nor any other document discussed at the hearing, clearly stipulate that a deduction can be made, I find that the Landlord has failed to establish that she had written authority to retain any portion of the deposit she collected.

I find that the Landlord submitted insufficient evidence to establish that it was reasonable to interpret that the email sent on September 18, 2010 constituted written consent to retain the security deposit. In reaching this conclusion I was heavily influenced by the email the Tenant sent to the Landlord on September 01, 2010, in which he advised her that he is "not very comfortable with him deducting utility costs and taxes from the deposit".

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord did not file an Application for Dispute Resolution and no part of the security deposit was repaid until more than fifteen days after the Landlord received the Tenant's forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

Conclusion

I find that the Tenant has established a monetary claim of \$1,050.00, which is comprised of double the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that

amount. I find that this claim must be reduced by the \$260.00 that was returned to the Tenant in September of 2010.

On the basis of these calculations, I grant the Tenant a monetary Order in the amount of \$790.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: April 01, 2011.

Residential Tenancy Branch