



Dispute Resolution Services

Page: 1

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.

The Tenant stated that she mailed a package of evidence to the Landlord, via registered mail, on April 20, 2011. The Landlord stated that he has not yet received that package of evidence. The Tenant did not submit evidence to corroborate her statement that the evidence was mailed to the Landlord. The evidence package allegedly mailed to the Landlord was not accepted as evidence for these proceedings, as I have insufficient evidence to conclude it was served on the Landlord in accordance with the Rules of Procedure.

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 and the Tenant agree that the Tenant moved into a rental unit on this residential property on May 01, 2010; that the tenancy for that rental unit ended at the end of May and the Tenant moved into this rental unit on June 01, 2010; that the parties entered into a written tenancy agreement for this rental unit that required the Tenant to pay monthly rent of \$700.00 during the winter months and \$650.00 during the summer months.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$495.00 for the tenancy that they entered into on May 01, 2010.

The Tenant stated that in the tenancy agreement prepared for this tenancy, she gave the Landlord written permission to retain \$100.00 of the \$495.00 security deposit and it was her understanding that the remaining \$395.00 of that security deposit would be applied to this tenancy. She stated that she was never provided with a copy of the tenancy agreement for this tenancy.

The Landlord stated that he cannot find a copy of the tenancy agreement for this tenancy and he does not recall whether the agreement authorized him to retain \$100.00 of the security deposit paid for the previous tenancy. He stated that it was his understanding that he could keep part of the security deposit to compensate for cleaning and other costs and that the remainder of the security deposit would be transferred to this tenancy. He stated that he has not yet determined the amount owing from the previous tenancy so he has not yet established how much of the first security deposit was transferred to this tenancy.

The Landlord and the Tenant agree that this tenancy ended on December 31, 2010 and that the Tenant mailed her forwarding address to the Landlord on, or about, January 14, 2011. The Landlord acknowledged that he has not returned any portion of the security deposit and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that Landlord and the Tenant entered into a tenancy for this rental unit on June 01, 2010; that they had previously had a tenancy agreement for a different rental unit on the same residential property; that this tenancy ended on December 31, 2010; and that the Tenant sent her forwarding address to the Landlord, by mail, on January 14, 2011.

I find that the Tenant paid a security deposit of \$495.00 for the first tenancy. On the basis of the Tenant's testimony and in the absence of evidence to the contrary, I find that the Tenant gave the Landlord written authorization to retain \$100.00 of that security deposit. I find that the Landlord has submitted no evidence to show that he had written authority to retain any other amount from that security deposit.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. As the Landlord has not established that he had written authority to retain any more than \$100.00, I find that he did not have the right to retain any more than that amount, in spite of any verbal agreement he believes was made. In reaching this conclusion I note that the Tenant did not agree that she gave the Landlord verbal authorization to retain anything other than the aforementioned \$100.00.

As the Landlord and the Tenant both understood that the remainder of the original \$495.00 security deposit would be used as a security deposit for the new tenancy, I find that the remaining \$395.00 of the original security deposit was held as a security deposit for the new tenancy.

The undisputed evidence is that the Landlord did not return any portion of the security deposit that had been applied to the new tenancy; that the Tenant did not authorize the Landlord to retain any portion of the security deposit that had been applied to the new tenancy; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit that had been applied to the new tenancy.

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 has not repaid the security deposit of \$395.00 or filed an Application for Dispute Resolution claiming to keep any portion of it.

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, plus any interest due on the original amount.

Conclusion

I find that the Tenant has established a monetary claim of \$840.00, 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. 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 29, 2011.

Residential Tenancy Branch