



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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. Neither party submitted evidence to the Residential Tenancy Branch.

Preliminary Matter

The Agent for the Landlord stated that the Landlord leases the land on which this residential complex is located from a First Nations Band. He contends that the residential complex is not governed by the *Residential Tenancy Act (Act)*, as the complex is located on land leased from a First Nations Band. Before proceeding to examine and consider the merits of the Tenant's application, I must determine whether this application has jurisdiction under the *Residential Tenancy Act*.

Generally speaking, one level of government cannot legislate within the sphere of the other level of government. Section 91 of the Constitution Act confers the jurisdiction over federal lands to the federal government, while the provincial government has jurisdiction over issues arising out of residential tenancies. Case law makes it clear that provincial legislation cannot affect the "use and occupation" of First Nations Land because that power belongs to the federal government under section 91. Since a tenancy agreement is an interest in land, any part of the *Act* which affects the use and occupation of a rental unit does not apply to rental units located on property that is a reserve, covered by treaty, or is otherwise controlled by the Federal Government on behalf of First Nations People.

Jurisdiction is less clear for disputes which do not affect the use and occupation of First Nations Indian Land, such as issues related to money owed. A monetary claim for the return of a security deposit does not affect the right to the use and occupation of First Nations Land, particularly once the tenancy agreement has ended. I therefore find that I

have jurisdiction in this matter, as it does not affect the use and occupancy of the rental unit that is the subject of this dispute.

Issue(s) to be Decided

The issue to be decided is 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 Agent for the Landlord and the Tenant agree that this tenancy began on September 01, 2009; that the parties signed a written tenancy agreement that was created by the Residential Tenancy Branch; the Tenant was never advised that this tenancy did not fall under the jurisdiction of the *Residential Tenancy Act (Act)*; that the tenancy agreement required the Tenant to pay monthly rent of \$1,550.00 per month on the first day of each month; that the Tenant paid a security deposit of \$775.00 and a pet damage deposit of \$775.00 on July 30, 2009; that the tenancy ended on January 31, 2011; and that the Tenant provided the Landlord with her forwarding address in writing on, or before, January 31, 2011.

The Agent for the Landlord and the Tenant agree that the Tenant did not authorize the Landlord, in writing, to retain any portion of the security/pet deposits; that the Landlord did not return any portion of the security/pet deposits; and that the Landlord did not file an Application for Dispute Resolution with the Residential Tenancy Branch claiming against the security deposit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$775.00 and a pet damage deposit of \$775.00 on July 30, 2009; that the tenancy ended on January 31, 2011; that the Landlord received the Tenant's forwarding address, in writing, on, or before, January 31, 2011; that the Landlord did not return any portion of the deposits; that the Tenant did not authorize the Landlord to retain any portion of the deposits; that the Landlord did not file an Application for Dispute Resolution with the Residential Tenancy Branch claiming against the deposits; and that the Landlord did not have authorization to retain any portion of the deposits.

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 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 either deposit or filed an Application for Dispute Resolution.

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 deposits that were paid.

Conclusion

I find that the Tenant has established a monetary claim of \$3,050.00, which is comprised of double the security deposit, double the pet damage 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: June 03, 2011.

Residential Tenancy Branch