



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents to the Landlord, by registered mail, on February 22, 2011. The Tenant provided a copy of the registered mail receipt and tracking number, along with a Canada Post Tracking printout. The printout indicates that the Landlord received the Notice of Hearing documents on March 3, 2011.

The Tenant testified that he provided the Landlord with copies of his documentary evidence by registered mail, sent on May 12, 2011. The Tenant provided a tracking number for that registered mail package.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on December 1, 2010. Monthly rent was \$380.00. The Tenant paid a security deposit in the amount of \$190.00 on November 30, 2010. A copy of the tenancy agreement was provided in evidence. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy. The Tenant moved out of the rental unit on January 15, 2011.

The Tenant gave the following oral testimony and documentary evidence:

The Tenant testified that on January 1, 2011, he gave the Landlord written notification that he was ending the tenancy effective February 1, 2011, along with notification of his forwarding address. The Tenant testified that on January 21, 2011, he gave the Landlord another written notification of his forwarding address. Copies of these letters were provided in evidence.

The Tenant stated that he did not agree that the Landlord could retain any of the security deposit. On February 15, 2011, the Landlord gave the Tenant \$70.00 of the security deposit.

The Landlord gave the following oral testimony:

The rent did not include utilities. The Tenant did not pay his share of utilities during the tenancy and therefore she deducted money from the security deposit to cover this cost. The Landlord testified that the Tenant told her that she could retain money for his share of utilities at the end of the tenancy.

Analysis

It is important to note that throughout the Hearing, the Landlord interrupted the Tenant's testimony and constantly interrupted me when I was questioning her or the Tenant. The Landlord stated that her English was bad and that she was having difficulty

understanding me. I understood the Landlord, and she was able to clearly answer my questions when she chose to do so. I warned the Landlord four times that I would remove her from the call if she continued to interrupt and to talk over the Tenant and me. The Landlord would not stop talking and I disconnected her from the call before the Hearing concluded in order to make myself heard to the Tenant.

This is the Tenant's application. The Landlord has not filed an application for unpaid utilities and is at liberty to do so.

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's **written** consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing (whichever shall last occur), a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on January 1, 2011 and January 21, 2011. The Landlord also received the Tenant's forwarding address in writing on March 3, 2011 when she received the Tenant's Application for Dispute Resolution in the Tenant's Notice of Hearing documents.

I find that the tenancy ended on February 1, 2011, pursuant to the Tenant's notice to end the tenancy. Therefore the Landlord had fifteen days from February 1, 2011, to return the security deposit in full or file an application against the security deposit. The

Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. The Landlord returned \$70.00 to the Tenant within 15 days of the end of the tenancy and therefore I find that the Tenant is entitled to a monetary order for double the residue of the security deposit, in the amount of \$240.00.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$240.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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