



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit.

The parties appeared at the teleconference hearings, gave affirmed testimony, confirmed receipt of the hearing documents and evidence submitted by the Tenant, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement that began on September 5, 2010. Rent was payable by the first of each month in the amount of \$450.00 and on August 13, 2010 the Tenant paid \$225.00 as the security deposit.

The Tenant testified she vacated the property just before October 1, 2010 and a letter was sent to the landlord on October 20, 2010 providing the Landlord her forwarding address and requested the return of her security deposit. Her rent was paid directly to the Landlord by Income Assistance and at the end of September the Landlord received payment for October 2010 rent and did not return it.

The Landlord testified and confirmed the Tenant moved out sometime in September 2010; however the Landlord claims the Tenant disappeared sometime mid September 2010. The Landlord stated that she received the October 20, 2010 letter in the regular

mail on approximately October 24, 2010 and with this letter were the keys to the rental unit. She confirmed the letter included a forwarding address for the Tenant and a request for the return of the security deposit.

The Landlord has not returned the security deposit, has not made an application to keep the security deposit and does not have the Tenant's permission in writing to keep the security deposit.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports the Tenant vacated the rental unit sometime between mid September and the end of September 2010 and provided the Landlord with her forwarding address in writing in a letter that was received by the Landlord on approximately October 24, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than November 8, 2010. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest in the amount of **\$450.00** (2 x \$225.00 plus Interest of \$0.00).

I have included with my decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

A copy of the Tenant’s decision will be accompanied by a Monetary Order for **\$450.00**. This Order is legally binding and must be served on the respondent Landlord.

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: July 22, 2011.

Residential Tenancy Branch