



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD; FF

Introduction

This is the Tenant's application for return of the security deposit paid to the Landlord; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with the Notice of Hearing documents by registered mail on May 19, 2011. The Tenant provided the Canada Post tracking printout which indicates that the Landlord received the documents on May 31, 2011.

Issues to be Decided

- Was the Landlord the Tenant's landlord?
- Is the Tenant entitled to a return of the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant shared a suite with the Landlord. The Landlord does not own the rental unit and pays rent to her landlord. There was no written tenancy agreement. The Tenant paid rent in the amount of \$838.00 directly to the Landlord, who in turn paid rent to her landlord. The Tenant provided copies of cancelled rent cheques in evidence, payable to the Landlord.

The Tenant testified that she provided the Landlord with a security deposit in the amount of \$400.00 at the beginning of September, 2010. The Landlord held the security deposit and returned only \$100.50 on April 15, 2011. The Tenant stated that she did not agree that the Landlord could retain any of the security deposit because she did not do any damages and cleaned before she left. The Tenant moved out of the rental unit on March 22, 2011, but paid full rent for the month of March, 2011. She stated that she was not sure if she provided the Landlord with her forwarding address.

The Landlord stated that she was confused about whether or not she was the Tenant's landlord. The Landlord testified that the Tenant had some contact with the Landlord's landlord during the tenancy, but agreed that the Tenant paid no rent directly to the Landlord's landlord and that the Landlord's landlord did not hold the security deposit.

She agreed that the Tenant did not give her permission to retain any of the security deposit. The Landlord testified that the Tenant left dirty laundry, did not clean the shared kitchen and bathroom, and damaged a bed that the Landlord had lent to the Tenant. The Landlord testified that she hired a cleaner and kept a portion of the security deposit to pay the cleaner's bill and to compensate for the broken bed.

The Landlord testified that she did not know where the Tenant had moved, and therefore she sent the balance of the security deposit to the Tenant's mother.

The Landlord stated that there was no condition inspection report completed at the beginning or the end of the tenancy.

Analysis

- Was the Landlord the Tenant's landlord?

Section 1 of the Residential Tenancy Act (the "Act") defines "landlord" as follows:

"landlord", in relation to a rental unit, includes **any** of the following:

- (a) the owner of the rental unit, the owner's agent or **another person who, on behalf of the landlord,**
 - (i) permits occupation of the rental unit under a tenancy agreement, or**
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;
(emphasis added)

Section 1 of the Act defines "tenancy agreement" as follows:

"tenancy agreement" means an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

(emphasis added)

Based on the testimony of both of the parties, I find that the Landlord is the Tenant's landlord. She accepted a security deposit and rent from the Tenant. I find that the parties had an oral tenancy agreement and that rent was \$838.00 per month.

Having found that this was a tenancy and that the Landlord was the Tenant's landlord, I find that the provisions of Section 38 of the Act apply with respect to the security deposit.

- Is the Tenant entitled to a return of the security deposit pursuant to the provisions of Section 38 of the Act?

Sections 38(4) and (5) of the Act states:

Return of security deposit and pet damage deposit

38 (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

Pursuant to the provisions of Sections 38(4) and (5) of the Act, I find that the Landlord had no right to retain any of the Tenant's security deposit. I order that the Landlord return the balance of the security deposit in the amount of **\$299.50** to the Tenant

forthwith to the address provided by the Tenant on her Application for Dispute Resolution.

The Landlord retains the right to file an Application under the provisions of Section 67 of the Act, should she so desire.

The Tenant has been successful in her application and is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$349.50** for service upon the Landlord. **I order that the Landlord pay this sum to the Tenant within 15 days of receipt of this Decision.** 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: August 26, 2011.

Residential Tenancy Branch