



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit. At the beginning of the hearing, each of the Parties claimed that they had not received certain documents allegedly served on them by the other party. I find that this is of no consequence, however, as only two of the documents in question were relevant and the Parties do not dispute the contents of each of those two documents (ie. the tenancy agreement and e-mail correspondence between the Parties dated May 13, 2011).

During the hearing, the Landlords claimed that the corporate Landlord that originally appeared on the Tenant's application was not a proper party to these proceedings but rather simply a company owned by the other Landlord (A.W.). The Tenant said she believed that the corporate Landlord was a proper party because A.W. had given her his business card on which this company name appeared. The Tenant admitted, however that this company name did not appear on the tenancy agreement. In the circumstances, the Parties agreed to an amendment of the Tenant's application to remove the (limited) corporate company and replace it with the (operating) company name that appears on the tenancy agreement.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

The Parties executed a tenancy agreement for the period, April 1 to November 30, 2011. The Tenant said she moved in on April 1, 2011 and moved out on May 1, 2011. The Landlords said the Tenant moved in on March 1, 2011 and moved out on March 31, 2011. Rent was \$595.00 per month. The Tenant paid a security deposit of \$595.00 at the beginning of the tenancy.

The Parties agree that the Tenant gave her forwarding address in writing via e-mail to the Landlords on May 13, 2011. The Parties also agree that the Tenant did not give the Landlords written authorization to keep the Tenant's security deposit and that it has not been returned to her.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlords received the Tenant's forwarding address in writing on May 13, 2011. I also find that the Landlords did not have the Tenant's written consent to keep the security deposit of \$595.00. Consequently, the Landlords had until May 28, 2011 (at the latest) to either return the Tenant's security deposit or to file an application for dispute resolution to make a claim against the security deposit. I find that the Landlords took neither of these steps because they were under the mistaken belief that they could withhold it to compensate them for (alleged late notice from the tenant ending the tenancy). As a result, I find pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit or **\$1,190.00** to the Tenant.

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit, I find that she did not specifically waive reliance on s. 38(6) of the Act. Finally, s. 19 of the Act says that "a Landlord must not require or accept a security deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement." I find that the Landlords contravened s. 19 of the Act by requiring and accepting a security deposit from the Tenant in the amount of \$595.00, or one full month's rent.

Conclusion

A Monetary Order in the amount of **\$1,190.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 13, 2011.

Residential Tenancy Branch