



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of part of a security deposit plus compensation equal to the unreturned portion of the security deposit due to the Landlord's alleged failure to return it as required by the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

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

Background and Evidence

The Parties initially entered into a tenancy agreement for an 8 month fixed term commencing September 1, 2009 which ended on or about April 20, 2010 when the Tenant moved out. The Parties entered into another tenancy agreement for an 8 month fixed term commencing September 1, 2010 which ended on or about April 20, 2011 when the Tenant moved out. The Tenant paid a security deposit of \$150.00 at the beginning of the first tenancy (which was not returned by the Landlord at the end of that tenancy). The Tenant paid an additional security deposit of \$25.00 at the beginning of the second tenancy for a total security deposit of \$175.00. The Tenant's rent includes the exclusive use of a bedroom and the shared use of common areas in a house with other tenants who are students.

The Tenant said at the end of her first tenancy, she was under the mistaken belief that because she would be returning to the rental unit in September 2010 she could leave some of her belongings in her room. The Tenant said she was later advised that the Landlord removed her belongings and put them in storage. The Parties agree that on a few occasions during the 2nd tenancy, the Landlord asked the Tenant to pay \$25.00 for cleaning her room at the end of the 1st tenancy which she refused to do. However, the after the 2nd tenancy ended, the Landlord deducted \$35.00 from the Tenant's security deposit without her written authorization. This deduction represented the \$25.00 from the 1st tenancy for cleaning out her room and \$10.00 for carpet cleaning at the end of the 2nd tenancy.

The Parties also agree that the Tenant did not give the Landlord authorization to make any deductions from her security deposit and that the \$35.00 has not been returned to the Tenant. The Parties further agree that the Tenant gave the Landlord her forwarding address in writing on September 1, 2010 and again on May 11, 2011.

Analysis

During the hearing, the Landlord argued that it was “impossible” for him to comply with the Act by doing move in and move out condition inspection reports with his tenants who are students because they all arrive and depart at the same time. As a result, the Landlord said he conducts his affairs as though it was a university residence. However, I find that this tenancy is not excluded under s. 4(b) the Act because the rental property is not owned or operated by an educational institution to its students or employees. Consequently, the Landlord is required to comply with the Act and in particular, the provisions regarding condition inspection reports and security deposits.

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 Landlord received the Tenant’s forwarding address in writing on September 1, 2010 and again on May 11, 2011 but did not return \$35.00 of her security deposit. I also find that the Landlord did not have the Tenant’s written authorization to keep the security deposit and that his right to make an application for dispute resolution to make a claim against the security deposit was extinguished under s. 24(2) and s. 36(2) of the Act because he did not complete a move in or a move out condition inspection report in accordance with the Regulations to the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the unreturned portion of the security deposit or \$70.00. As the Tenant has been successful in this matter, she is also entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee she paid for this proceeding.

Conclusion

A Monetary Order in the amount of **\$120.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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 26, 2011.

Residential Tenancy Branch