



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order as compensation for the return of her security deposit / and recovery of the filing fee. The tenant attended and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the “hearing package”), the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail. In the absence of any alternate address provided by the landlord, the address for service used by the tenant is the same address as the dispute address, as this is the address which the landlord has used to carry on business as a landlord.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the original term of tenancy was from November 15, 2008 to November 14, 2009. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of \$1,700.00 was payable in advance on the first day of each month, and a security deposit of \$850.00 was collected. The tenant and an agent acting on behalf of the landlord participated together in a move-in condition inspection on October 5, 2008. However, the closest the parties came to completing a move-in condition inspection report are the limited manual notations made on the top right hand corner of the tenancy agreement.

By way of e-mail dated July 11, 2011, the tenant gave notice to end the tenancy effective August 14, 2011. In that same e-mail the tenant provided her forwarding address and requested the return of her security deposit to that address.

The parties met at the unit on August 14, 2011 and completed a move-out condition inspection. The tenant testified that the landlord identified no concerns with the condition of the unit at that time, and a condition inspection report was not completed.

Subsequently, without prior discussion and without the tenant's oral or written consent, the landlord deducted certain costs from the security deposit in the total amount of \$500.00. The landlord repaid the balance of the security deposit of \$350.00 by way of deposit into the tenant's bank account on August 30, 2011 (\$850.00 - \$500.00).

Deductions undertaken by the landlord are as follows:

\$100.00: penalty assessed by property management

\$300.00: painting of one wall

\$ 80.00: carpet stain

\$ 20.00: removal of garbage in garage

Total: \$500.00

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 38: **Return of security deposit and pet damage deposit**

In summary, the above legislation provides in part, that the right of a landlord to claim against the security deposit is extinguished in the event that the landlord does not complete the condition inspection report and give a copy of it to the tenant in accordance with the regulations.

Further, pursuant to the above legislation, a landlord is required to pay the tenant double the amount of the security deposit if the landlord neither files an application for dispute resolution, nor repays the security deposit within 15 days of the later of the date tenancy ends or the date when the tenant provides the landlord with a forwarding address in writing. The exception to the foregoing arises when, at the end of a tenancy,

the tenant agrees in writing to the landlord's withholding of all or a portion of the security deposit.

Based on the documentary evidence and affirmed / undisputed testimony of the tenant, I find that the landlord did not complete either a proper move-in or move-out condition inspection report. I also find that the tenant did not give the landlord written permission to withhold any portion of the security deposit. Further, I find that the landlord neither filed an application for dispute resolution, nor repaid any portion of the security deposit until August 30, 2011, which is one day beyond the 15 day period after the end of tenancy on August 14, 2011.

Following from all of the above, I find that the tenant has established entitlement to repayment of \$500.00 which is the amount withheld from the security deposit by the landlord, in addition to recovery of the \$50.00 filing fee. The tenant has specifically waived her statutory entitlement to the double return of the security deposit.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$550.00** (\$500.00 + \$50.00). Should it be necessary, this Order may be served on the landlord, filed in the Small Claims Court 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: December 15, 2011.

Residential Tenancy Branch