



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD and FF

Introduction

This hearing was convened in response to cross applications.

On August 23, 2011 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and pet damage deposit, and to recover the filing fee from the Landlord for the cost of filing this application.

On August 12, 2011 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for compensation for damage to the rental unit; for the return of the security deposit and pet damage deposit; and to recover the filing fee from the Tenant for the cost of filing this application.

Both parties were represented at the hearing on November 15, 2011. At this hearing the Landlord was advised that his application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act* (*Act*), because his Application for Dispute Resolution did not provide sufficient particulars of his claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims.

The Landlord was advised that he retains the right to file another Application for Dispute Resolution in which he claims compensation for damages to the rental unit. Due to the presence of a language barrier, it is my opinion that the Landlord did not clearly understand the information that was provided to him at the hearing and he was advised that the information would be conveyed to him in writing.

The female Tenant stated that on August 21, 2011 the Notice of Hearing and Application for Dispute Resolution was sent to the Landlord, via registered mail, at the service address listed on the Tenant's Application for Dispute Resolution. She stated that the package was unclaimed and was returned to the sender. The Tenant submitted documentary evidence from Canada Post that corroborates this testimony.

The male Tenant stated that on October 31, 2011 the Tenant sent additional evidence to the Landlord, via registered mail, at the service address listed on the Tenant's Application for Dispute Resolution. He stated that the package is still unclaimed. The Tenant submitted documentary evidence from Canada Post that corroborates this testimony

The Landlord stated that he did not receive any of the aforementioned documents, nor did he receive notification of the mail from Canada Post. He stated that he no longer lives at the service address listed on the Tenant's Application for Dispute Resolution. He provided an updated address at the hearing, which is a different unit in the same residential complex.

I determined that it was appropriate to adjourn the hearing, as it would be unfair to the Landlord to proceed without allowing him time to consider the claims being made by the Tenant. The Tenant was directed to re-serve all documents sent to the Landlord on August 21, 2011 and October 31, 2011 to the Landlord, via registered mail, by November 18, 2011. The Landlord was advised to contact the Residential Tenancy Branch for the purposes of obtaining a copy of the Tenant's Application for Dispute Resolution if he has not received the aforementioned documents by November 25, 2011. The Landlord reiterated these instructions at the hearing and I was convinced he understood the directions that were given to him.

Both parties were represented at the reconvened hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of the security deposit and pet damage deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

Analysis

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenant paid a security deposit of \$1,200.00; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that this tenancy ended on February 28, 2009 and that the Tenant provided the Landlord with a forwarding address, in writing, on XXXXXXXX.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

Conclusion

I find that the Tenant has established a monetary claim of \$1,054.75, which is comprised of double the security deposit, \$4.75 in interest on the original amount of the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia 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: **November 15, 2011.**

Residential Tenancy Branch