

DECISION

Dispute Codes:

MNSD; FF

Introduction

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

The Tenant gave affirmed testimony at the Hearing.

The Tenant filed her Application on September 29, 2011, against an agent of the Landlord's. She amended her Application on September 30, 2011, substituting the name of the corporate Landlord for the Landlord's agent and amending the amount of her monetary claim. The Tenant testified that she sent the amended application, by registered mail, to the corporate Landlord on October 3, 2011, to the address the Landlord gave on the move-out Condition Inspection Report. The Tenant testified that the registered mail envelope was returned to her "refused". The Tenant provided a copy of the registered mail receipt and tracking number, along with the returned envelope, in evidence.

The Tenant testified that she sent another copy of the Notice of Hearing documents to the Landlord one and ½ weeks ago, and it has not been returned to her by the post office.

Based on the affirmed testimony and documentary evidence provided by the Tenant, I am satisfied that the Landlord was duly served with the Notice of Hearing documents according to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed effective 5 days after mailing the documents, whether or not the Respondent chooses to accept delivery. I find that the Landlord was served on October 8, 2011.

Issues to be Decided

- Is the Tenant entitled to a monetary order pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

This tenancy began on July 1, 2010 and ended on May 30, 2011. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy. A Condition Inspection Report was completed at the beginning of the tenancy, and at the end of the tenancy. A copy of the Report was provided in evidence. The Tenant testified that she provided the Landlord with her forwarding address at the move out inspection and again in writing on September 13, 2011. The Tenant provided a copy of the letter in evidence.

The Tenant testified that two weeks prior to the end of the tenancy, her boyfriend had an accident which damaged the garage door at the rental property. An ICBC claim was initiated with respect to the damage.

The Tenant testified that when the parties met to perform the move-out inspection on May 30, 2011, the Landlord's agent had told her that the Landlord would be holding her security deposit until the ICBC claim was settled because there might be additional charges that would come out of the security deposit. The Tenant testified that the Landlord's agent told her to sign the form in Section 2 acknowledging that the Landlord could **hold on** to the security deposit until the ICBC claim was settled, and the Tenant agreed that the Landlord could retain the security deposit pending the ICBC settlement. The Tenant testified that she had also agreed that the Landlord could deduct \$62.00 from the security deposit for a garbage removal fee, but was expecting the remaining \$338.00 to be returned to her upon completion of the ICBC claim. She stated that it was only after she received her copy of the Condition Inspection Report in October, 2011, that she noticed she had signed the form in a box that indicated that she agreed the Landlord could **deduct** \$400.00 from her security deposit.

The Tenant testified that the ICBC claim was settled on August 8, 2011, and that no additional charges were payable with respect to the garage door.

The Tenant testified that she received an e-mail from the Landlord's agent on or about October 3, 2011, enclosing her copy of the Condition Inspection Report. The Tenant stated that the Landlord's agent also advised the Tenant that there was a broken bar in the fridge door that had gone unnoticed until a couple of days after the move-out inspection. The Landlord's agent stated that the Landlord would be deducting the cost of replacing the bar from her security deposit (\$40.00 for the part, \$82.50 for a service call, \$15.00 for a fuel surcharge and HST of \$16.50 for a total of \$154.00). The Tenant stated that she did not agree that the Landlord could deduct this amount, that she thought it was excessive and that if the Landlord had advised her of the broken bar when it was first discovered, she would have replaced it herself for \$40.00.

The Tenant testified that she received a partial refund of her security deposit in the amount of \$183.50 on October 4, 2011.

Analysis

Based on the Tenant's uncontested testimony, her documentary evidence, and the actions of the Landlord with respect to returning a portion of the Tenant's security deposit, I am satisfied that the Tenant did not give the Landlord permission to keep all of the \$400.00 security deposit. I am satisfied that the Tenant did give the Landlord permission to retain \$62.00 from the security deposit for removal of garbage, but did not give the Landlord permission to retain \$154.00 of her deposit for replacing the refrigerator bar.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I accept the Tenant's undisputed testimony that she provided the Landlord with her forwarding address in writing on September 13, 2011. The Landlord did not return the balance of security deposit (after deducting the \$62.00 charge the Tenant agreed to) within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit within 15 days.

Section 38(6) of the Act provides that if the Landlord does not comply with Section 38(1) of the Act, the Landlord **must** pay the Tenant double the amount of the security deposit.

I find that the Tenant has established a monetary award against the Landlord, calculated as follows:

Security deposit	\$400.00
Less amount Tenant agreed the Landlord could deduct	<u>-\$62.00</u>
Subtotal	\$388.00
Compensation pursuant to Section 38(6) of the Act	<u>x2</u>
Subtotal	\$776.00
Less amount Tenant received on October 4, 2011	<u>-\$183.50</u>
TOTAL	\$592.50

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

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$642.50** for service upon the Landlord. 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: January 05, 2012.

Residential Tenancy Branch