



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit.

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

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; whether the Landlord is entitled to recover the filing fee for the cost of this Application for Dispute Resolution; and whether the Landlord should retain the security deposit or it should be returned to the Tenant.

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into another rental unit in this residential complex on September 01, 2008; that the Tenant moved into this rental unit in 2009; that the Tenant was required to pay monthly rent of \$395.00 by the first day of each month for this rental unit; and that the Tenant paid a security deposit of \$197.50 on August 21, 2008, which was subsequently transferred to this tenancy.

The Agent for the Landlord stated that a condition inspection report was completed at the start of the tenancy and the Tenant contends that a condition inspection report was not completed at the start of this tenancy. The parties agree that a condition inspection report was not completed at the end of this tenancy. The Agent for the Landlord stated that the Landlord did not propose a time and date, in writing, for a final inspection.

The Landlord and the Tenant agree that the Tenant did not pay rent for August of 2010; that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent at the rental unit on, or about, August 02, 2010; and that the Tenant vacated the rental unit on August 15, 2010 or August 16, 2010.

The Landlord and the Tenant agree that the Tenant provided the Landlord with her forwarding address, in writing. The Tenant stated that it was mailed on November 23, 2010 and the Agent for the Landlord agrees it was received sometime shortly thereafter. The Landlord filed the Application for Dispute on December 19, 2011.

The Landlord and the Tenant agree that the security deposit has not been returned and that the Landlord did not have written permission from the Tenant to retain any portion of it.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant did not pay the rent of \$395.00 that she was obligated to pay on August 01, 2010. As tenants are obligated to pay rent when it is due, pursuant to section 26 of the *Residential Tenancy Act (Act)*, I find that she owes this amount to the Landlord.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord received the Tenant's forwarding address, in writing, in November of 2010; that the Tenant paid a security deposit of \$197.50; 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; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit until December 19, 2011.

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 did not file an Application for Dispute Resolution 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.

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 Landlord has established a monetary claim, in the amount of \$445.00, which is comprised of \$395.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that the Tenant has established a monetary claim, in the amount of \$396.08, which is comprised of double the return of her security deposit, which is \$395.00, plus \$1.08 in interest on the original deposit.

After offsetting these two monetary awards, I find that the Tenant must pay \$48.92 to the Landlord. Based on these determinations I grant the Landlord a monetary Order for the amount \$48.92. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: January 04, 2012.

Residential Tenancy Branch