



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

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

The Agent for the Landlord stated that she did not receive a complete copy of the Application for Dispute Resolution and the Tenant's evidence package until February 08, 2011. She declined the opportunity to request an adjournment.

Issue(s) to be Decided

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

Background and Evidence

The Tenant and the Landlord agree that this tenancy began on November 01, 2010; that this tenancy ended on October 31, 2011; and that the Tenant paid a security deposit of \$542.50.

The Landlord and the Tenant agree that a condition inspection report was completed on November 01, 2010 and October 31, 2011, a copy of which was submitted in evidence. The parties agree that on the last page of the report which was completed on October 31, 2011 the Tenant signed the area which authorizes the Landlord to deduct money from her security deposit.

The Landlord and the Tenant agree that this report declares that the Landlord can retain \$85.00 for cleaning the carpets, \$65.00 for cleaning the drapes, \$100.00 for general cleaning, and \$50.00 for repairing holes in the wall, which is a total of \$300.00. The Agent for the Landlord stated that her copy of the inspection report has the words "plus taxes" written above the carpet cleaning entry, although this appears to be crossed out on the copy that was submitted in evidence. The Agent for the Landlord stated that the

Landlord elected not to collect the \$85.00 for cleaning the carpets and to keep \$67.20 for cleaning the drapes as the Landlord paid this amount with tax calculated into the cost.

The Tenant contends that she was “forced” to sign the condition inspection report. She stated that the Agent for the Landlord repeatedly insisted that she sign the report and she would not let her leave the rental unit until it was signed. The Agent for the Landlord denies this allegation and stated that the Tenant did not make any indication that she did not wish to sign the report.

The Landlord and the Tenant agree that the Landlord mailed the Tenant a cheque in the amount of \$325.30, which was dated November 15, 2011. The Agent for the Landlord stated that this cheque was not mailed until December 18, 2011. The Tenant stated that she received the cheque in December but she has not yet cashed this cheque.

The Agent for the Landlord stated that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord and the Tenant agree that the Tenant provided the Landlord with her forwarding address on October 31, 2011, which was recorded on the condition inspection report. The parties agree that a postal code was not provided at this time. The Agent for the Landlord stated that the security deposit refund was not mailed until December of 2011 because the Landlord was waiting for a postal code, which the Landlord eventually obtained from Canada Post.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$542.50, that this tenancy ended on October 31, 2011, and that the Landlord returned \$325.30 of the deposit on December 18, 2011.

On the basis of the condition inspection report that was submitted in evidence, I find that the Landlord had written authority from the Tenant to retain up to \$300.00 from the Tenant’s security deposit. I find that the Tenant submitted insufficient evidence to establish that she signed this report under duress. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s testimony that she was “forced” to sign the report or that refutes the Agent for the Landlord’s testimony that she was not forced to sign the report and that the Tenant made no indication that she was objecting to signing the report.

As the Landlord has written authorization to retain up to \$300.00 from the Tenant’s security deposit and the Landlord retained \$217.20 from the security deposit, I find that the Landlord properly retained this amount, pursuant to section 38(4) of the *Residential Tenancy Act (Act)*.

On the basis of the undisputed evidence presented at the hearing, I find that he Tenant

provided the Landlord with a forwarding address, in writing, on October 31, 2011, albeit the Tenant did not provide a postal code. I find that failing to provide a postal code does not render the forwarding address invalid as a postal code can easily be obtained from Canada Post and mail can be delivered to an address that does not have a postal code.

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 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 did not file an Application for Dispute Resolution and the Landlord did not return the outstanding portion of the security deposit until December 18, 2011, which is more than 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.

Conclusion

I find that the Tenant has established a monetary claim of \$917.80, which is comprised of double the original security deposit of \$542.50, less the \$217.20 that the Landlord elected to retain pursuant to section 38(4) of the *Act*, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. I find that this monetary claim must be reduced by the \$325.30 payment that was made to the Tenant on December 18, 2011.

Based on these calculations I grant the Tenant a monetary Order in the amount of \$592.50. 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: February 14, 2012.

Residential Tenancy Branch