



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 dealt with an application by the tenant for return of the security deposit, money owed or compensation due to damage or loss and other.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began December 15, 2011 with monthly rent of \$3600.00 and the tenant paid a security deposit of \$1800.00.

The tenant testified that he had been promised that the rental unit would be taken off the multiple listing service and no longer be listed for sale and that the tenant would not be disturbed by realtors showing the rental unit to prospective buyers.

The tenant stated that when he learned that the rental unit would continue to be for sale the tenant on December 13, 2011 advised the landlord by email and post that he would not be taking possession of the rental unit. The tenant at this same time also provided the landlord with his forwarding address in writing.

The tenant stated that the landlord advised him in a conversation that he would return all of the monies paid by the tenant but has not done so. The tenant acknowledged that he does not have an agreement in writing regarding return of the monies paid to the landlord.

The tenant stated that he had paid a \$1800.00 security deposit and \$1800.00 rent for ½ of December 2011. The tenant stated that the landlord misrepresented the rental unit and he believes that the security deposit and rent should be refunded in full; the landlord has also not made a claim to keep all or part of the security deposit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing; the landlord in this case had done neither.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

Accordingly I find that the tenant is entitled to a monetary order for \$3600.00 in return of double the security deposit.

In regards to the \$1800.00 rent paid to the landlord for ½ of December 2011, I find that the landlord is entitled to this rent and it will not be returned to the tenant.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for \$3600.00 in return of double the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$3650.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 7, 2012

Residential Tenancy Branch