



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application for dispute resolution by the tenant for a monetary order for the return of his security deposit.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a return of his security deposit?

Background and Evidence

The tenant submitted that this month to month tenancy started on or about June 1, 2011, ended on November 30, 2011, monthly rent was \$438.00 and that the tenant paid a security deposit of \$218.75 at the beginning of the tenancy.

In support of his application, the tenant submitted that his forwarding address was sent to the landlord in mid December, 2011, by his advocate and that the landlord has failed to return any of his security deposit.

Upon query, the tenant's advocate stated that she was the one who composed the letter to the landlord, notifying the landlord of the tenant's forwarding address, which was the advocate's office, and requesting the return of the security deposit. Upon query, the tenant's advocate stated that the letter was composed and sent to the landlord in mid December, 2011, within two weeks of the end of the tenancy; however the tenant's advocate was unable to testify as to the specific date in mid December, 2011. The letter was not supplied into evidence.

In response, the landlord stated that the tenant was not a tenant of his and instead, he was a subtenant of his actual tenant living in the rental unit, with the landlord's

permission. Therefore, according to the landlord, he did not have a landlord-tenant relationship with the tenant.

The landlord acknowledged that the total monthly rent for the rental unit was \$875.00, and that he received one half of the monthly rent from a government agency on behalf of the tenant and that he likewise received one half of the security deposit for the rental unit on behalf of the tenant from that government agency.

Despite this, the landlord stated that the receipt of the funds from the government agency bearing the tenant's name did not create a landlord-tenant relationship. The landlord stated that it was easier collecting these funds from a government agency than trying to chase down his actual tenant for payment.

The landlord also claimed that the receipt of one-half of the security deposit was not for the benefit of the tenant, but rather was the completion of the payment of his actual tenant's security deposit.

The landlord claimed that because the tenant was never his tenant, he did not have an obligation to return the security deposit.

Upon query, the landlord acknowledged receiving the letter in December, 2011, from the advocate, but stated he could not recall the contents of the letter.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the applicant/tenant is required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the applicants pursuant to section 7.

I reject the argument of the landlord that the parties were not in a landlord-tenant relationship. I find the landlord's acceptance of a cheque for \$218.75 for a security deposit, monthly rent cheques equal to one half of the monthly rent for the rental unit, from the government agency on behalf of the tenant, and permission to the tenant to occupy the rental unit created a tenancy.

As I have found that the parties had entered into a tenancy agreement, the landlord became responsible to deal with the security deposit at the end of the tenancy in a manner consistent with his requirements under the *Act*.

In this case, both parties acknowledged a letter sent to the landlord by the advocate's office in mid December, which is within two weeks of the end of the tenancy.

In weighing the oral evidence of the parties, I find the landlord's testimony that he did not recall the contents of the letter to be lacking in credibility and upon a balance of

probabilities, I accept the testimony of the tenant's advocate and find that the landlord received the tenant's forwarding address in mid December, 2011. I do not find it logical that the tenant's advocate would transmit a letter to the landlord for any other reason other than notification of the tenant's forwarding address.

As I could not determine from the evidence a specific date in December that the letter was transmitted, I accept that it was mailed no later than December 31, 2011. Section 90 of the Residential Tenancy Act states that documents delivered in this manner are deemed delivered five days later. Therefore I find that the landlord received the tenant's forwarding address no later than January 5, 2012, has not filed an application for dispute resolution and has not returned the tenant's security deposit.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I therefore grant the tenant's application for dispute resolution for a return of his security deposit of \$218.75. Due to the landlord's failure to comply with Section 38, I find that the tenant is entitled to receive from the landlord double the security deposit.

Conclusion

Having granted the tenant's application, I have issued a monetary order in favour of the tenant for the sum of **\$437.50**, comprised his security deposit of \$218.75, doubled.

I am enclosing a monetary order for **\$437.50** with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

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 05, 2012.

Residential Tenancy Branch