



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for a Monetary Order for the return of double the amount of the security deposit; and to recover the filing fee associated with this application.

By the landlord: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. The landlord testified that on November 23, 2011, the tenant gave her \$225.00 towards the security deposit to secure the rental unit for December 1, 2011. She stated that the tenant called on November 30, 2011 and advised that he found other accommodations and would not be moving in. The landlord said that she re-rented the unit on January 1, 2012 and that she lost rental income for the month of December. The landlord said that she received the tenant's forwarding address in writing on December 7, 2011.

The tenant did not dispute the landlord's testimony. He stated that B.C Housing found him more preferred accommodations that he had been waiting for two years.

Analysis

The *Residential Tenancy Act* defines in part "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit.

Section 16 of the *Act* specifies that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant occupies the rental unit.

By giving the landlord the security deposit I find that the parties entered into a tenancy agreement and that in doing so they triggered their statutory obligations under the Act for a tenancy to start December 1, 2011. As such the tenant ought to have given the tenant a proper 1 month notice to end tenancy, and the tenancy should have ended no earlier than January 1, 2012. Since the tenant did not give proper notice I find that the landlord is entitled to recover the loss of rental income for that month.

However, 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. Section 38(6) of the *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.

In this matter the landlord received the tenant's forwarding address on December 7, 2011, but the security deposit was not returned and the landlord did not apply for dispute resolution until February 1, 2012, well beyond the 15 day time line allowed by statute. Therefore the tenant is entitled to the return of double the amount of the security deposit.

Conclusion

Since the parties have established a claim of the same amount (\$450.00), I grant the tenant a monetary order of \$225.00 for the return of the security deposit. This Order may be registered in the Small Claims Court and enforced as an order of that Court.

I decline to make an order regarding the filing fee and each party will assume responsibility for the costs associated with their application.

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 14, 2012.

Residential Tenancy Branch