



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 recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began November 24, 2011 with monthly rent of \$1700.00 and the tenant paid a security deposit of \$850.00.

The tenant testified that he attended the move-out inspection with the landlord on March 1, 2012 and provided his forwarding address to the landlord in writing on the move out condition inspection report at that time. The tenant also noted on the move out condition inspection report that he did not agree with the landlord's claim that the hardwood floor was scratched and dented.

The tenant stated that when he moved in to the rental unit that it had not been cleaned by the last tenant and he had to not only clean the entire rental unit but pay to have trash hauled away. The tenant acknowledged that he did not have an agreement in place with the landlord whereby the landlord would reimburse him for this expense and stated that at this point he would be willing to not claim the \$205.00 for trash removal if the landlord would return his security deposit. The tenant stated that the landlord also demanded that he pay the first and last month's rent and a security deposit at the start of the tenancy.

The landlord testified that he had kept the security deposit as the tenant had damaged the new hardwood floors, caused \$6000.00 damage to the floors and broken the lease which resulted in a loss of rental income. The tenant responded by stating that he had vacated the rental unit after the landlord served him with a notice to end tenancy.

The landlord stated that he was of the understanding that today's hearing was to discuss all of the issues related to the tenancy and he was not aware that a landlord had to make their own application to claim against the security deposit or to claim for damages or loss.

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 \$1700.00.

In regards to the tenant's claim for \$205.00 in trash removal fees, I find, pursuant to section 62(2) of the *Act*, that in the absence of any verification of the cost claimed, that the claim for trash removal is dismissed without leave to reapply.

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 \$1700.00 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 **\$1750.00.**

If the amount is not paid by the landlord(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: April 19, 2012

Residential Tenancy Branch