



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking the return of their security deposit, doubled, and for recovery of the filing fee.

The parties appeared and the hearing process was explained. 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

Are the tenants entitled to a monetary order for the return of their security deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on August 15, 2010, ended on March 31, 2012 and that the tenants paid a security deposit of \$400.00 on August 2, 2010.

The tenant submitted that they gave the landlord their written forwarding address on March 31, 2012, when they met the landlord and her husband at the rental unit.

Upon query, the tenant stated that the landlord and her husband came to the rental unit, but were in a hurry, which led to a quick walk-through instead of an inspection. The tenant submitted that the landlord turned on the stove and other items to ensure that they were working and decided that was enough for an inspection. The tenant testified that the landlord handed her a piece of paper and asked the tenants to write down their forwarding address, which the tenant did, at which point the landlord put the piece of paper in her notebook and left.

The tenant submitted that the landlord has not returned their security deposit.

The landlord confirmed that she has not returned the tenants' security deposit, but contended that she has never received the tenants' written forwarding address.

When questioned, the landlord denied the tenant's statement of receiving the written forwarding address on the day of the inspection or at all.

I then asked the landlord if she had someone with her on the day of the walk-through, to which she said, yes, her husband. I asked the landlord for her husband's telephone number. The landlord gave one number, and then changed that number to another number.

I informed the parties I would attempt to contact the landlord's husband to ask him about his version of events on the day in question, March 31, 2012. I was unsuccessful in contacting the landlord's husband at the number provided and asked her for an alternate number. The landlord stated there was not an alternate number.

I then asked the tenant if she had someone present with her on the day of the walk-through and she replied that she was there with her husband and sister. I asked the tenant for her husband's telephone number, and again informed the parties that I would attempt to contact the tenant's husband (co-tenant) and ask him about his version of events.

I was successful in reaching the co-tenant; I identified myself and informed the co-tenant that we were presently in the hearing. I then asked the co-tenant if he recalled meeting the landlord at the rental unit on March 31 and he said yes. I then asked the co-tenant of the details and he said that they were there for an inspection, but that the landlords were too busy for a full inspection. The co-tenant stated that there was a quick walk-through as the landlord stated they had an appointment to attend.

I asked the co-tenant if the landlord was supplied the tenants' written forwarding address on that day and he stated yes, as the landlord thrust a piece of paper at him and instructed him to write down their forwarding address. The co-tenant stated he wrote down his parents' address as he was not yet sure on the postal code on the tenants' new address.

The co-tenant stated that the landlord took the piece of paper and put it in her notebook and then rushed off. When questioned, the co-tenant described the notebook, including noting that the paper was lined.

The co-tenant stated that when the tenants had not been returned their security deposit within 15 days of the end of the tenancy, he called the landlord to remind her of the security deposit.

The tenant stated that he was then informed by the landlord that they would not receive their security deposit until final repair bills had come in.

The landlord also confirmed that the tenants have never been provided a copy of a condition inspection report.

Analysis

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

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 after the end of the tenancy. 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.

In the case before me, after considering all of the evidence submitted at this hearing, I find that the tenants have provided sufficient evidence to prove that they provided the landlord with their written forwarding address on March 31, 2012, the day of the final walk-through and the last day of the tenancy.

In reaching this conclusion I was influenced by the landlord's hesitation when I asked her directly if the tenant wrote down their address on that day, which she went on to deny.

I was further most strongly influenced by the co-tenant's impromptu testimony about the circumstances surrounding the delivery of their written forwarding address on March 31, which was clear, consistent, detailed and corroborative of the tenant's earlier statements to me during the hearing.

The co-tenant was unaware that I would call him during the hearing; yet his unhesitant testimony supported the tenant's testimony in full and in detail and in complete contradiction to the landlord's testimony.

Due to this, I find, on a balance of probabilities, that the landlord lacked credibility and I could not then rely on the landlord's evidence.

As I have found that the landlord's testimony and evidence lack credibility or reliability, I preferred the testimony and evidence of the tenant.

As I have found on a balance of probabilities that the landlord was provided the tenants' written forwarding address on March 31, 2012, the landlord was required to return the tenants' security deposit or file an application claiming against the security deposit for damage to the rental unit by April 15, 2012.

I have no evidence that the landlord did either.

Based on the above, I find that the landlord failed to comply with Section 38 of the *Act* and I therefore find the tenants are entitled to a return of their security deposit, doubled.

I find the tenants' application had merit and I award them recovery of their filing fee, in the amount of \$50.00.

Conclusion

I find that the tenant has established a total monetary claim for the sum of \$850.00, comprised of the tenants' security deposit of \$400.00, doubled, and for recovery of the filing fee of \$50.00.

I grant the tenants a monetary order for \$850.00 and enclose that monetary order with the tenants' 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: May 14, 2012.

Residential Tenancy Branch