



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") for a monetary order for the return of his security deposit and a monetary order for money owed or compensation for damage or loss.

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, doubled?

Background and Evidence

The tenant submitted that this month to month tenancy started on or about August 1, 2011, that although he paid rent for December 2011, he moved out on November 30, 2011, monthly rent was \$300.00 and that the tenant paid a security deposit of \$150.00 at the beginning of the tenancy.

The landlord disagreed that the tenant's rent was \$300.00, due to the landlord's contention that the monthly rent for the entire rental unit was \$900.00, in conjunction with another tenant.

The landlord, however, agreed that he received a security deposit of \$150.00 on behalf of the tenant.

In support of his application, the tenant submitted although he never gave the landlord his forwarding address, he gave the landlord his forwarding telephone number. The tenant contended that the landlord could have used the telephone number at any time to find out his forwarding address.

In response, the landlord stated that the tenant owed him money and again stated his position that the tenant was not a tenant in common, and that he was not obligated to return the security deposit to this tenant.

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.

As to whether this tenant was a joint tenant or a tenant in common with another tenant, that matter was decided in a Decision by the Residential Tenancy Branch ("RTB") on March 28, 2012. Therefore I am bound by this earlier Decision, under the legal principle of *res judicata*.

In that Decision, this tenant, who was referred to as "roommate," was declared to be a tenant in common and therefore, had a separate tenancy agreement with the landlord.

As such, 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*.

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.

In this case, the tenant confirmed that he has never provided the landlord with his written forwarding address. A forwarding telephone number does not meet the requirements of the *Act*.

As a security deposit is held in trust by the landlord for the tenant's benefit, I find the tenant is entitled to its return. However, due to the tenant's failure to comply with his

obligation under the Act that he provide the landlord with his written forwarding address, I find the tenant is not entitled to double that amount.

Conclusion

As I have found that the tenant is entitled to a return of his security deposit, I have issued a monetary order in favour of the tenant for the sum of **\$150.00**, comprised his security deposit.

I am enclosing a monetary order for **\$150.00** 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: May 11, 2012.

Residential Tenancy Branch