



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 tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") for a monetary order for the return of her security deposit, doubled, and for recovery of the filing fee.

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 monetary order equal to her security deposit, doubled, and to recover the filing fee?

Background and Evidence

The tenant submitted although she had been a tenant of another property of the landlord, this tenancy started on or about October 1, 2011, ended on January 31, 2012 monthly rent was \$900.00 and that she paid a security deposit of \$450.00 at the beginning of the tenancy.

In support of her application, the tenant stated that she gave her written forwarding address to the landlord's agent on February 3, 2012, and that the landlord has failed to return any of her security deposit. In further explanation, the tenant stated that the landlord's agent resided in another suite in the residential property and that all dealings of the tenancy were with the agent, due to the landlord living out of town.

The tenant further stated that she has not signed over any portion of her security deposit.

When questioned, the tenant testified that she has never received a copy of the move-in or move-out condition inspection report or of the tenancy agreement. The tenant stated that she performed the condition inspections with the landlord's agent as well as entered into the tenancy agreement with the agent signing as landlord. The agent was also given the tenant's security deposit.

In response, the landlord stated that she filed an application for dispute resolution within 15 days of receiving the tenant's written forwarding address, on or about February 3, 2012, for issues such as unpaid rent and retention of the security deposit.

However, the landlord's application was dismissed without leave to reapply on April 18, 2012, due to the landlord's failure to attend the hearing.

When questioned as to why she did not return the tenant's security deposit after her application claiming against the security deposit was dismissed, the landlord stated she did not think to return it.

When questioned as to why she still did not return the tenant's security deposit after receiving the tenant's application seeking the return of the security deposit, the landlord stated she was informed by a government access office to wait until the hearing.

When questioned, the landlord stated that she did give the tenant a copy of the condition inspection reports, by making a copy and putting it into the tenant's mailbox. The landlord could not state when she placed the documents in the tenant's mailbox, instead stating that it was within 30 days of the inspections.

The landlord agreed that she had no dealings with the tenant during the tenancy, and that her agent dealt with the 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.

Under the Act, within 15 days of the end of the tenancy or receiving the tenant's forwarding address in writing, whichever is later, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit. Upon failure of landlord to comply with this requirement, the landlord must pay the tenant double their security deposit.

In the case before me, although the landlord failed to supply a copy of her application and Decision, I accept that she did file an application to retain the security deposit within 15 days of receiving the tenant's written forwarding address. However, that application was dismissed without leave to reapply.

Once the landlord's application was dismissed without leave to reapply, the landlord no longer held a claim against the security deposit and should have returned the funds within 15 days of that date. Again, the landlord was put on notice by the tenant that she requested the return of her security deposit when the tenant served her application for dispute resolution, and again failed to take any action.

I therefore grant the tenant's application for dispute resolution for a return of her security deposit of \$450.00. Due to the landlord's failure to return the tenant's security deposit within 15 days of having lost her right to claim against the deposit, I find that the tenant is entitled to receive from the landlord double the security deposit.

Even had I not made the decision to grant the tenant's application based on the above reasons, I would still make the decision that the tenant is entitled to a return of her security deposit, doubled.

In reaching this conclusion, I was influenced by the tenant's statements that she never received a copy of the condition inspection reports. I accept this testimony as I find it more likely that the landlord, after having admitted that she had no dealings with the tenant during the tenancy, did not make a copy of the documents on both occasions and deliver it to the rental unit herself. At any rate, the landlord stated that she dropped off the documents within 30 days, and the requirement under the Act and regulations is that the tenant shall receive a copy within 7 days.

I therefore find that the landlord had extinguished her right to claim against the security deposit by her failure to provide the tenant with a copy of the move-in or move-out condition inspection reports.

Conclusion

Having granted the tenant's application, I have issued a monetary order in favour of the tenant for the sum of **\$950.00**, comprised of her security deposit of \$450.00, doubled, and for recovery of the filing fee of \$50.00.

I am enclosing the monetary order for **\$950.00** 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 25, 2012.

Residential Tenancy Branch