



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD and MNDC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of his security deposit and a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of double his security deposit paid in relation to this tenancy and to a rent refund for rent paid for April of 2012.

Preliminary Matter

The Respondent with the initials "R.A." stated that he is employed by the Landlord to do maintenance work at the residential complex but that he is not authorized to act as an agent for the Landlord in relation to this tenancy. He requested that he be removed as a Respondent in this matter.

The Agent for the Landlord stated that the Respondent with the initials "R.A." is her fiancé and is employed by the Landlord to do maintenance work at the residential complex. She agrees that he is not authorized to act as an agent for the Landlord in relation to this tenancy.

The Tenant stated that he believes the Respondent with the initials "R.A." is an agent for the Landlord because he served him with an eviction notice. The Respondent with the initials "R.A." stated that he was present when documents were served to the Tenant, but only in the capacity of a witness.

The Tenant stated that he has nothing in writing that supports his understanding that the Respondent with the initials "R.A." is an agent for the Landlord.

On the basis of the testimony of the Respondents and in the absence of documentary evidence that shows the Respondent with the initials "R.A." is acting as an agent for the

Landlord in relation to this tenancy, I find there is insufficient evidence to show that he is an agent for the Landlord. I therefore grant this individual's application to remove him as a Respondent in this matter.

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into this rental unit in November of 2011; that the Tenant was obligated to pay monthly rent of \$490.00 by the first day of each month; that the Tenant paid a security deposit of \$230.00; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that he paid the security deposit sometime during the last week of September of 2008. The Agent for the Landlord stated that she is not sure when the security deposit was paid.

The Landlord and the Tenant agree that the Landlord did not provide the Landlord with a forwarding address until he personally served the Agent for the Landlord with his Application for Dispute Resolution on April 18, 2012.

The Landlord and the Tenant agree that the this tenancy was the subject of a dispute resolution hearing on April 05, 2012; that on April 05, 2012 the Landlord's application for an early end to tenancy was granted; that the Landlord was granted an Order of Possession that was effective two days after it was served upon the Tenant; that the Order of Possession was personally served to the Tenant on April 05, 2012; and that the Tenant vacated the unit on April 07, 2012.

The Landlord and the Tenant agree that rent was paid for April of 2012. The Tenant is seeking a rent refund for the 23 days in April that he was unable to occupy the rental unit. The Tenant argued that he is entitled to a rent refund because he left the unit in good condition; he did not have enough time to move; and he needs the money to pay for his new accommodations.

Analysis

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenant paid a security deposit of \$230.00 during the last week of September of 2008. For the purposes of calculating interest payable on the deposit, I find that the payment was made on September 23, 2008.

On the basis of the undisputed evidence, I find that the Tenant vacated the rental unit on April 07, 2012; that the Tenant provided the Landlord with a forwarding address on April 18, 2012; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the

deposit; and that the Landlord did not have authorization to retain any portion of it.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. As the tenancy ended when the Tenant vacated the rental unit on April 7, 2012 and the Landlord received the Tenant's forwarding address, in writing, on April 18, 2012, the Landlord was obligated to either return the security deposit or file an Application for Dispute Resolution by May 03, 2012. I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

Section 67 of the *Act* authorizes me to order a landlord to refund rent or pay compensation only when the Landlord has breached the *Act* or the tenancy agreement. In these circumstances a Dispute Resolution Officer has previously determined that this tenancy should end because the Tenant had breached the *Act*. As there is no evidence that the tenancy ended because the Landlord breached the *Act* or the tenancy agreement, I cannot conclude that the Tenant is entitled to a rent refund as a result of this tenancy ending on April 07, 2012, even though rent had been paid for April. I therefore dismiss the Tenant's application for a rent refund.

Conclusion

The Tenant has established a monetary claim of \$460.94, which is comprised of double the security deposit plus \$0.94 in interest on the original amount of the security deposit, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: June 12, 2012.

Residential Tenancy Branch