



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") seeking a monetary order for a return of her security deposit, doubled, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

Neither party raised any issues about receipt of the other's evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the **relevant** evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order comprised of her security deposit, doubled, and to recover the filing fee?

Background and Evidence

I heard undisputed testimony that this tenancy began in August 2008 and that the tenant paid a security deposit of \$260.00 in August 2008.

The tenant said that she moved out on May 30, 2012 and the landlord said the move out date was May 31, 2012.

The tenant's monetary claim is in the amount of \$570.00, comprised of her security deposit of \$260.00, doubled, and for recovery of the filing fee of \$50.00.

The parties agree that the landlord was provided the tenant's written forwarding address on May 31, 2012, on the condition inspection report.

The tenant said she did not agree that the landlord may retain any amount from her security deposit.

The tenant said that the landlord did not return her security deposit or any portion of her security deposit until after she filed for dispute resolution, which was June 27, 2012, and served her application upon the landlord. After such time, the landlord sent the tenant a cheque in the amount of \$166.49. The tenant said she has not cashed the cheque and still retains it.

The tenant's relevant evidence included a copy of the cheque from the landlord, her original condition inspection report and several emails to the landlord requesting the return of her security deposit.

Landlord's response-

The landlord agreed that the tenant's written forwarding address was provided on the condition inspection report on May 31, 2012.

The landlord said that due to the condition of the rental unit at the end of the tenancy, he was entitled to make deductions from the tenant's security deposit. The manner in which the landlord calculated the deductions appeared on the copy of the condition inspection report submitted by the landlord. The landlord showed on his copy of the condition inspection report that he deducted \$100.00 and was to give the tenant a cheque for \$166.49.

The landlord submitted that he hand delivered the cheque to the tenant on June 14, 2012. I note that a review of the tenant's evidence shows a copy of the cheque, which was signed by the landlord, was dated July 12, 2012.

The landlord confirmed that he has not made an application for dispute resolution claiming against the tenant's security deposit.

After a review of the evidentiary submissions of the parties, it was necessary to question the landlord about his evidence. The tenant submitted her entire original condition inspection report and the landlord submitted a copy of the last page of the condition inspection report.

Under the Security Deposit Statement box on the last page of the tenant's condition inspection report, the box showed no deductions taken from the security deposit. Additionally, the tenant signed this box and provided the date and her written forwarding address.

The copy provided by the landlord contained several alterations, including a deduction for \$100.00. As the tenant has previously signed the document, it appeared that the tenant agreed to the deduction.

When I questioned the landlord about the handwritten notations, he informed me that it was “standard practice” to fill in amounts after the inspection report had been signed because it would not be known all costs right away. The landlord confirmed that he did make the alterations after the inspection and the tenant had received her copy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

Under section 38 of the Act, at the end of a tenancy 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 within 15 days of the later of receiving the tenant’s forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence shows that the landlord received the tenant’s written forwarding address on May 31, 2012, the last day of the tenancy.

I find the tenant proved that she did not authorize the landlord to make any deductions from her security deposit and the landlord possessed no such right to alter a document without the tenant’s knowledge or consent, despite the fact he appeared to believe he could unilaterally and after the fact have the tenant agree to a deduction.

I inform the landlord that I do not find any situation where it is an acceptable practice to alter a document after that party has signed the document, unaware that changes will be made to suit the purposes of the one making the alterations, as was the case here.

The landlord confirmed he has not filed for dispute resolution claiming against the security deposit.

As to returning a portion of the security deposit on June 14, 2012, by hand delivery, as claimed by the landlord, I find the landlord lost all credibility when a copy of the cheque showed the date of July 12, 2012. I therefore find the landlord failed to return any portion of the security deposit until receiving the tenant’s application.

Due to the above, I find the landlord has clearly breached section 38 of the Act and I therefore order the landlord to pay the tenant double her security deposit.

I also allow the tenant recovery of the filing fee of \$50.00.

The landlord argued that it was “standard practice” to alter a document, in this case, the condition inspection report, after the other party, the tenant in this case, has signed the document showing no deductions were to be made from her security deposit.

While I cannot find that the landlord had the intent to deceive as he quite readily admitted to altering the condition inspection report when confronted with the tenant's copy, the landlord should be aware that altering documents after a party has signed that document could be construed as fraudulent activity.

If the landlord has any question as to the legality of altering documents after the other party has signed that document, the landlord is advised to seek the counsel of a lawyer.

Conclusion

I find the tenant has established a monetary claim in the amount of \$571.63, comprised of her security deposit of \$260.00, doubled, interest on the base amount of the security deposit in the amount of \$1.63 and for recovery of the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$571.63 which I have enclosed with the tenant's Decision.

In the event the tenant cash the cheque of \$166.49 received from the landlord, the amount of the monetary order is accordingly reduced by that amount.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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: August 24, 2012.

Residential Tenancy Branch