



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord on June 19, 2012 by registered mail with the Application and Notice of Hearing (the "hearing package"). The Tenant said she mailed the hearing package to an address for service provided by the Landlord in an e-mail on June 17, 2012 (which was the rental unit address). The Tenant said the Landlord also used this as his mailing address during the tenancy. According to the Canada Post online tracking system, a Notice regarding the registered mail was left at the Landlord's service address however on or about July 10, 2012, someone advised the post office that the "recipient was not located at the address provided" and the package was returned to the Tenant. Given that the Landlord was served with the Tenant's hearing package at the address provided by him, I find that the Landlord was served as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started on October 1, 2010 and ended on May 24, 2012 when the Tenant moved out. Rent was \$1,300.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$1,300.00 at the beginning of the tenancy.

The Tenant said she completed a condition inspection report with the Landlord at the beginning of the tenancy but one was not completed at the end of the tenancy. The Tenant said at the time of a move out inspection, the Landlord gave her a cheque in the amount of \$1,300.00 for the security deposit but it was later returned by her bank for insufficient funds. The Tenant said the Landlord promised to pay the security deposit to her in cash on June 15, 2012, however on the evening of June 14, 2012 the Landlord contacted her to advise her that he would be withholding her deposit to pay for alleged damages to the rental unit.

The Tenant said she sent the Landlord her forwarding address in writing via e-mail on June 17, 2012. The Tenant also said she did not give the Landlord written authorization to keep the security deposit and it has not been returned to her.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may use the security deposit to pay for the damages but must return it to the Tenant within the 15 days required under s. 38(1) of the Act.

I find that the tenancy ended on May 24, 2012 and that the Landlord received the Tenant's forwarding address in writing on June 17, 2012. I also find that the Tenant did not give the Landlord written authorization to keep the security deposit of \$1,300.00 and it has not been returned to her. I further find that the Landlord did not make an application for dispute resolution to make a claim against the security deposit for damages to the rental unit and that his right to do so was extinguished under s. 36(2) of the Act because he did not complete a move out condition inspection report in accordance with the Regulations to the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$2,600.00 to the Tenant together with the \$50.00 filing fee she paid for this proceeding.

Conclusion

A Monetary Order in the amount of \$2,650.00 has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 21, 2012.

Residential Tenancy Branch