



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNCD and FF

Introduction

This hearing was convened on the tenant's application of June 29, 2012 seeking return of her security deposit in double on the grounds that the landlord did not return it or make application to claim against it within the latter of 15 days from the end of the tenancy or receipt of the tenants' forwarding address. The tenant also claims bank charges incurred as a result of the landlord's attempts to cash the last month's rent cheque after having given notice to end tenancy for landlord use which entitles the tenant to the last month's rent free.

At the commencement of the hearing, the tenant asked for an adjournment on the grounds that her brother had very recently been admitted to hospice and she is naturally preoccupied with the more serious matter. The landlord objected to the adjournment stating that her husband had recently passed and she was most anxious to dispose of this matter as quickly as possible.

Given that the tenant waited for two years less a day from the end of the tenancy to make her application, and given that the matters in dispute are clearly addressed in the *Act*, I felt it in the best interests of all concerned to proceed.

On a further preliminary matter, the landlord noted that the tenant's application erred in adding two of her family members' names as respondents while she alone is the landlord. I have amended the style of cause accordingly.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to a monetary award for return of the security deposit, whether the amount must be doubled, and whether she is entitled to recover the bank charges in question.

Background and Evidence

This tenancy began on or about May 1, 2006. Rent was \$620 when the tenancy concluded on June 30, 2012 and the landlord held a security deposit of \$287.50, of which \$140 was returned to the tenant.

The parties concur that there was no move-in condition inspection report but disagree as to whether the move-out condition inspection report was properly conducted.

During the hearing, the tenant gave uncontested evidence that she had provided the landlord with her forwarding address in writing before and at the end of the tenancy. The tenant stated that the landlord had returned only \$140 of the deposit without her consent to do duct repairs and cleaning the tenant stated were not needed or attributable to her.

The tenant also stated that the landlord had not returned her cheque for June 2010 rent, despite having served her with a two-month notice to end tenancy for landlord use which entitles the tenant to the last month's rent free under section 51 of the *Act*. Therefore, the tenant cancelled the cheque at a cost of \$12.50 and was subsequently charged a \$42.50 NSF fee when the landlord attempted to cash it.

The landlord stated that the banking transactions were done by her late husband, and while she stated that she did not have direct knowledge of the cheque in question, her husband's character was such that he would never have attempted to deprive the tenant of her rightful due.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposits.

In the present matter, I accept the evidence of the tenant that only \$140 of the deposit t returned and I have no evidence that the landlord made application to claim against it within 15 days of the end of the tenancy.

However, I accept the evidence of the landlord that she mailed the \$140 to the tenant on July 14, 2012, and while the tenant states she did not receive it until July 17, 2012, I find the mailing was within the 15 days permitted under the *Act*.

Therefore, I must find that the tenant is entitled to return of the double the unreturned portion of the security deposit ($\$287.50 - \$140 = \$147.50$) plus interest on the bare deposit..

I further find that the cheque cancelling and NSF charges were a direct result of the fact that the landlord did not return the June 2010 rent cheque and, in fact, subsequently deposited it. Therefore, I find that the landlord must compensate the tenant for the loss.

I find that the tenant should remain responsible for her own filing fee.

Therefore, I find that the landlord owes to the tenant an amount calculated as follows:

To return the retained portion of the security deposit	\$147.50
To double the retained portion of the security deposit (no intesest due)	147.50
Fee to cancel cheque	12.50
NSF fee	<u>42.50</u>
TOTAL	\$359.69

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$359.69**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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: September 11, 2012.

Residential Tenancy Branch