



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 an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double the security deposit plus interest, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and provided affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant submitted that her tenancy agreement began in December 1, 2004 and ended May 31, 2012. Rent was payable on the first of each month in the amount of \$575.00 and on November 8, 2004 the Tenant paid \$287.00 as the security deposit. No condition inspection report forms were completed at move in or at move out.

The Tenant advised that on April 28, 2012 she provided the Landlord notice that she would be ending her tenancy on May 31, 2012. She advised that she provided the Landlord her forwarding address on the following dates: May 26, 2012, June 11, 2012, and again on June 23, 2012 because the Landlord kept saying she lost her new address.

The Landlord signed into the hearing late, just as I was concluding the procedure. When I asked the Landlord why she was late she began yelling and said she was on her break from work so we needed to speed things up. When I began to confirm the details of the tenancy with the Landlord she continued to yell and kept arguing that she was not going to return the deposit. I then explained to the Landlord what appropriate conduct was for this proceeding and advised that if she continued to yell or interrupt me

I would disconnect her from the hearing in accordance with rule # 8 of the *Residential Tenancy Branch rules of procedure*.

The Landlord confirmed the details of the tenancy as provided by the Tenant and she also confirmed she received the Tenant's forwarding address on May 26, 2012. The Landlord stated she has not returned the Tenant's deposit, she has not made an application for dispute resolution to claim against the deposit, and she does not have an Order authorizing her to keep the deposit.

I asked the Landlord to confirm her address at which point she disconnected from the hearing.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports that the Tenant provided the Landlord with her forwarding address on May 26, 2012 and the tenancy ended May 31, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address, the landlord **must** repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit [emphasis added].

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than June 15, 2012. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord **must** pay the tenant double the security deposit [emphasis added].

As per the aforementioned, I find the Tenant has succeeded in proving her claim and I award her **\$584.16** (2 x \$287.00 + Interest of \$10.16).

The Tenant has succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenant has been awarded a Monetary Order for **\$634.16**. This Order is legally binding and may be enforced in Provincial Court after service upon 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 27, 2012.

Residential Tenancy Branch