



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 Landlords' alleged failure to return it as required by the Act as well as to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlords sought an adjournment so that they could file their documentary evidence. The Tenant disputed the Landlords' application for an adjournment. I find that the Landlords were served with the Tenant's application and the Notice of the Hearing on July 9, 2012 (more than 2 months prior to the hearing date). Given that the Tenant did not consent to an adjournment and given that the Landlords had a reasonable opportunity (i.e., 2 months) to submit any documentary evidence upon which they intended to rely at the hearing, I denied their request for an adjournment and excluded any evidence submitted by them after the hearing concluded pursuant to RTB Rule of Procedure 11.5(b).

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 month-to-month tenancy started on February 12, 2012 and ended on May 31, 2012 when the Tenant moved out. Rent was \$700.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$350.00 at the beginning of the tenancy. A condition inspection report was not completed at the beginning or at the end of the tenancy.

The Tenant said he gave the Landlords a letter on April 30, 2012 giving them written notice that he would be ending the tenancy and claimed that the letter included his forwarding address. The Tenant said the Landlords advised him that they sent a cheque in the amount of \$325.00 to this address but that it was returned to them. The Tenant said he picked up the cheque from the mail box on the rental property on June 21, 2012 but discovered on June 22, 2012 that a stop payment had been put on it by

the Landlords. The Tenant said he has not received any of his security deposit back and did not give the Landlords written authorization to keep any of it.

The Landlords claim that they gave the Tenant a number of opportunities both at the beginning and at the end of the tenancy to participate in a condition inspection report but that the Tenant was uncooperative. The Landlords admitted that they did not give the Tenant a Final Notice of Opportunity to Schedule a Condition Inspection. The Landlords said they arranged to do a move out inspection with the Tenant on June 22, 2012 but he did not attend. As a result of the Tenant's failure to participate in the move out inspection, the Landlords said they believed the Tenant had forfeited his right to the return of the security deposit.

Analysis

Sections 24(1) and 36(1) of the Act says that if a Tenant does not participate in a move in or a move out condition inspection report **and** the Landlord has complied with the Act and Regulations (by giving the Tenant 2 opportunities to participate in a condition inspection with the last opportunity put in writing on a Notice of Final Opportunity to Schedule a Condition Inspection), then the Tenant's right to the return of the security deposit is extinguished. In this case, I find that the Landlords did not provide the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection either at the beginning or at the end of the tenancy and therefore I find that the Tenant has not forfeited his right to the return of his 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. This means that the Landlords can file an application for dispute resolution to make a claim for compensation for damages to the rental unit however they cannot retain the security deposit to pay for those damages and must return it to the Tenant once the Tenant has complied with s. 38(1) of the Act (set out below).

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she 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 and pet damage deposit.

I find that the tenancy ended on May 31, 2012 however, I find that the Tenant did not give the Landlords his forwarding address in writing on April 30, 2012 as he claimed. Instead, I find that the Tenant gave the Landlords a letter ending the tenancy that merely had a return address at the head of the letter. The Tenant did not identify this address as an address to which his security deposit should be sent and he admitted

that it was his work address. I do not find it significant that the Landlords initially sent a cheque in partial payment of the security deposit to this address, because the Landlords would have remained liable for paying double the security deposit when it was returned to the Tenant because they sent it to an address that was not identified by the Tenant as the address to which the security deposit should be sent. The Tenant confirmed at the hearing however that the address on his application for dispute resolution was his forwarding address for the purposes of s. 38(1) of the Act.

Consequently, I find that the Tenant is entitled only to the return of the original amount of his security deposit or \$350.00. I also find that the Tenant is entitled pursuant to s. 72 of the Act to recover from the Landlords the \$50.00 filing fee he paid for this proceeding. The Tenant also sought to recover expenses for serving the Landlords with his application in this matter, however the Act does not make provision for the recovery of costs to bring and participate in dispute resolution proceedings (other than the filing fee) and therefore that part of the Tenant's application is dismissed without leave to reapply.

Conclusion

A Monetary Order in the amount of \$400.00 has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: September 19, 2012.

Residential Tenancy Branch