



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit and pet damage deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The Tenant and his witness gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents, via registered mail, to the Landlord on June 26, 2012. He stated that the rental unit was the lower suite of a house and that the Landlord occupied the upper suite, which is where he sent the Notice of Hearing documents. The Tenant testified that the documents were returned to him "unclaimed". The Tenant provided a copy of the returned envelope and registration details in evidence.

Section 89 of the Act provides methods of service for the Notice of Hearing documents. I find that the Tenant duly served the Landlord in accordance with the provisions of Section 89(1)(c) of the Act. The Landlord's failure to accept delivery of the documents does not affect the service provisions of Section 89. Section 90 of the Act provides that documents served in this manner are deemed to be received on the 5th day after mailing the documents. Therefore I find that the Landlord was duly served on July 1, 2012.

This application was scheduled to be heard via teleconference on September 4, 2012, at 9:30 am. and concluded at 9:50 a.m. The Landlord did not sign into the teleconference.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of Hearing The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The Hearing continued in the absence of the Landlord.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on July 1, 2011 and ended on May 31, 2012. Monthly rent was \$800.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 cash when he met with the Landlord to view the suite and paid 6 month's rent in advance along with a \$400.00 pet damage deposit on July 1, 2011. The Tenant provided a copy of the negotiated cheque in the amount of \$5,200.00 payable to the Landlord.

The Tenant stated that he signed a tenancy agreement with the Landlord, but despite repeated requests, the Landlord did not provide him a copy. He testified that he also repeatedly requested a receipt for the security deposit and rent payments, but the Landlord did not comply.

The Tenant's witness testified that she was with the Tenant when he provided the Landlord \$400.00 cash for the security deposit, about a week before the Tenant moved into the rental unit.

The parties performed an informal "walk through" at the beginning of the tenancy, but there was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy.

The Tenant testified that he gave the Landlord written notification of his forwarding address in a letter which he left in the rental unit on May 31, 2012. He stated that he also e-mailed the Landlord on May 31, 2012 and provided his address again. The Tenant testified that the Landlord replied to this e-mail, stating that the address provided was the Tenant's place of business and was not his new residential address. The Tenant provided copies of e-mails between the parties in evidence. He stated that he made it very clear that he wanted his deposits returned to him in full and that he would be filing an Application for Dispute Resolution for double the amounts if the Landlord did not do so.

The Tenant stated that he did not agree that the Landlord could retain any of the security deposit or pet damage deposit. The Landlord did not return any of deposits to the Tenant.

The Landlord has not filed an application for dispute resolution with respect to the security deposit or the pet damage deposit.

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

A security deposit and a pet damage deposit are held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security or pet damage deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the deposits in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the deposits.

Based on the Tenant's undisputed testimony, I am satisfied that the Landlord received the Tenant's forwarding address in writing on May 31, 2012. A forwarding address does not have to be a residential address. The Landlord did not return the deposits within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the deposits.

Based on the Tenant's and his witness's undisputed testimony and evidence provided, I am satisfied that the Tenant paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$400.00 at the beginning of the tenancy. Section 38(6) of the Act provides 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. Therefore, I find that the Tenant is entitled to a monetary order for double the deposits, in the amount of **\$1,600.00**. No interest has accrued on the deposits.

The Tenant has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$1,650.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 06, 2012.

Residential Tenancy Branch