



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord was not permitted to present evidence relating to damage to the rental unit, as that is not a matter in dispute at this hearing.

Preliminary Matter

The Landlord argued that he did not fully understand the nature of the Tenant's claim, as she originally sought a monetary Order for \$1,800.00, which was crossed out to show she was claiming \$1,160.20, which was crossed out to show that she was claiming \$640.00. In my view the Application for Dispute Resolution clearly shows that the Tenant is seeking a monetary Order in the amount of \$640.00.

The Landlord stated that he was further confused by the information in the Details of the Dispute, as the Tenant indicated that she was requesting double the amount of \$900.00. There is a hand written note in the Details of Dispute which indicates that \$580.00 had been returned. On the basis of the information provided on the Application for Dispute Resolution, I find that it would be reasonable to conclude that the Tenant was seeking the return of double her security deposit of \$900.00 less the \$580.00 that was returned to her, which is \$640.00 (\$320.00 X2).

Even if the Landlord did not clearly understand the precise amount of the monetary claim, I find that he know, or should have known, that the Tenant was seeking the return of any portion of the security deposit that is due to her. I find that proceeding with the hearing on this date did not unduly disadvantage the Landlord, as the issue in dispute is clear and he had a reasonable opportunity to respond to the issue in dispute.

In the Details of Dispute the Tenant declared that the Landlord was “not in compliance with regulations in regards to return of Security (Damage) Deposit”. The Landlord argued that he could not properly respond to the Tenant’s claim because she did not specify how he was not in compliance. I find that the Landlord has a responsibility to understand his obligations under the *Act*, including his obligations in regards to returning the security deposit, and that the Tenant is not required to educate him regarding those obligations. I find that the information in the Application for Dispute Resolution was clear and that the Landlord had a reasonable opportunity to prepare a response to the Tenant’s claims and that the Landlord has, in fact, submitted a substantial response to the claims, which clearly indicates he understands the issues in dispute.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$1,800.00; that this tenancy ended on October 31, 2011; that the Tenant did not give the Landlord written authority to retain the security deposit; and that the Landlord returned \$580.00 of the security deposit to the Tenant. The Landlord stated that he mailed the cheque for \$580.00, which was dated November 18, 2011, to the Tenant on November 19, 2011. The Tenant stated that she received the cheque sometime during the latter portion of November of 2011. The Landlord and the Tenant agree that the envelope in which this cheque was mailed is postmarked November 21, 2011.

The Landlord and the Tenant agree that a condition inspection report was completed at the start of the tenancy and that they jointly inspected the rental unit on November 06, 2011. The Tenant contends that the Landlord did not complete a condition inspection report on November 06, 2011, as he did not have the original inspection report with him on that date; that he made notes regarding the condition of the rental unit; that he completed the inspection report after they separated on November 06, 2011; and that he provided her with a copy of the completed report. The Landlord contends that condition inspection report was completed in the presence of the Tenant on November 06, 2011, which she did not sign because she was very upset.

The Landlord and the Tenant agree that on November 06, 2011 the Tenant told him what her forwarding address was and he wrote it down. The Landlord argues that this does not comply with the *Act*, as it was not provided to him in writing. The parties agree that the Tenant mailed a different forwarding address to the Landlord in May of 2012. The Tenant stated that she believes she mailed it sometime during the latter portion of May of 2012 and the Landlord stated that he received it on May 28, 2012.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution proceeding, in which the Landlord applied to retain the security deposit. The Tenant was able to provide the file number for that proceeding. Residential Tenancy Branch records indicate that the Landlord filed an application to retain the security deposit on June 01, 2012.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$900.00; that the tenancy ended on October 31, 2011; and that the Tenant did not give the Landlord written authorization to retain any portion of the security deposit.

I find that I have insufficient evidence to conclude whether the condition inspection report was properly completed on November 06, 2011 because the Landlord failed to bring the report to the final inspection or because the Tenant failed to sign it. I find that the version of events provided by both parties is reasonable and I have no reason to favour the testimony of one party over the other. As I am unable to determine which party did not comply with their obligations in regards to this report I find it appropriate, in these circumstances, to conclude that neither party has extinguished their right to the security deposit, pursuant to section 36 of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

I find that the Landlord received the Tenant's forwarding address, in writing, on November 06, 2011. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant told the Landlord what her forwarding address was on that date and then he wrote it down. I specifically note that the *Act* does not require the Tenant to serve the Landlord her forwarding address in writing, it merely stipulates that the Landlord must receive it in writing. The *Act* does not specify that the Tenant must create the written record. In my view, the Landlord received the forwarding address, in writing, as soon as he recorded the information on paper.

This finding is consistent with the definition of "receive" in the Merriam-Webster Online Dictionary, which is:

- to come into possession of : **ACQUIRE** <receive a gift>
- to act as a **receptacle** or container for <the cistern *receives* water from the roof>
- to **assimilate** through the mind or senses <receive new ideas>
- to permit to enter : **ADMIT**
- **WELCOME, GREET**
- to react to in a specified manner
- to accept as authoritative, true, or accurate : **BELIEVE**
- to support the weight or pressure of : **BEAR**
- to take (a mark or **impression**) from the weight of something <some clay *receives* clear impressions>
- **ACQUIRE, EXPERIENCE** <received his early schooling at home>
- to suffer the hurt or injury of <received a broken nose>

In determining this matter, I note that a forwarding address for the Tenant is recorded on the condition inspection report that the Landlord contends was completed on November 06, 2011, which was submitted in evidence.

In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not yet repaid the full security deposit and he did not file an Application for Dispute Resolution seeking to retain the security deposit within fifteen days of receiving the Tenant's forwarding address on November 06, 2011.

On the basis of the envelope that was submitted in evidence, I find that the Landlord the Landlord mailed a cheque, in the amount of \$580.00, to the Tenant on, or about, November 19, 2011. As this portion of the deposit was not returned until at least 13 days after the Landlord received the Tenant's forwarding address, in writing, and at least 19 days after the end of the tenancy, I find that the amount of the security deposit being held in trust at the end of the tenancy was \$900.00.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid. As the *Act* specifies that the Landlord must pay double the security deposit, I find that the Landlord must pay this amount regardless of the amount claimed by the Tenant in the Application for Dispute Resolution.

I find that the Tenant's Application for Dispute Resolution has merit and that she is entitled to recover the cost of filing her Application.

Conclusion

I find that the Tenant has established a monetary claim of \$1,850.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. I find that this claim must be reduced by the \$580.00 that was returned to the Tenant in November of 2011.

On the basis of these calculations I grant the Tenant a monetary Order in the amount of \$1,270.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: October 16, 2012.

Residential Tenancy Branch