



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 the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of his security deposit, doubled, and recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had not submitted evidence for the hearing.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and make arguments in support of their respective positions.

I have reviewed all oral evidence before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of his security deposit, doubled, and to recover the filing fee?

Background and Evidence

This tenancy began in 2010, with the tenant saying it started in March and the landlord saying it started in May. The parties agreed that the last day of the tenancy, or when the tenant moved out, was July 31, 2012. The parties also agreed that the tenant paid to the landlord a security deposit of \$300.00 at the beginning of the tenancy.

The parties agreed there was not a move-in condition inspection report or a move-out condition inspection report.

The parties agreed that the tenant provided his written forwarding address on August 5, 2012, in a letter, and that the landlord returned the amount of \$250.00 from the tenant's security deposit.

The tenant said that he did not agree to any deductions by the landlord and wanted a return of his full security deposit.

The tenant said that although he received the landlord's cheque, he has not cashed it.

The landlord said that he has put a "stop payment" on the \$250.00 cheque.

In response, the landlord said that he gave the tenant a cheque for \$250.00 on August 5, 2012, and informed the tenant that he would return the \$50.00 balance when the tenant removed the couch from the premises. The landlord said that the tenant removed the couch, but placed it down the street. The landlord told the tenant that he had to remove the couch from the street before he would return the balance.

The landlord said that after the tenant removed the couch from the street, he, the landlord, attempted to deliver the \$50.00 balance on August 15, 2012, but was unsuccessful. The landlord said that he then placed the \$50.00 cheque in the mail on August 20, 2012.

In response, the tenant said that he never received the cheque.

Analysis

Based on the relevant evidence, and on a balance of probabilities, I find as follows:

Under the relevant part of section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence shows that the last day of the tenancy was July 31, 2012, the landlord received the tenant's written forwarding address on August 5, 2012, the tenant has not agreed to any deductions from his security deposit, and the landlord has not applied for arbitration claiming against the security deposit.

The landlord was therefore required to return the full amount of the tenant's security deposit by August 20, 2012.

However, in contravention of the Act, the landlord deducted an amount from the tenant's security deposit without authority.

I do not accept the landlord's testimony that he did pay the balance within 15 days by placing a cheque in regular mail, as there is no independent proof and the tenant said he has not received it.

I therefore find the landlord has failed to comply with section 38 by returning the full amount of the tenant's security deposit within 15 days and I find the tenant is entitled to compensation in the amount of \$600.00, comprised of the tenant's security deposit of \$300.00, doubled.

I have not deducted the amount of \$250.00 from the tenant's entitlement as he is no longer able to cash the cheque due to the landlord's "stop payment" on that cheque.

As the tenant was successful with his application, I also allow him the recovery of the filing fee of \$50.00.

Conclusion

The tenant is entitled to compensation in the amount of \$650.00, comprised of his security deposit of \$300.00, doubled, and recovery of the filing fee of \$50.00.

I am enclosing a monetary order for \$650.00 with the tenant's Decision. This order is a legally binding, final order, and should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: November 09, 2012.

Residential Tenancy Branch