



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 her security deposit and for 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.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony 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.

Preliminary Issue-The landlord submitted written evidence, which was received by the Residential Tenancy Branch ("RTB") on November 6, 2012. The tenant said she had not received the evidence.

The Residential Tenancy Branch Rules of Procedure (Rules) require that evidence must be submitted at least 5 business days prior to the hearing, the failure of which may lead to the exclusion of the evidence. In this case, I considered whether to accept the landlord's evidence, which was not submitted within 5 business days.

The tenant's application was filed on August 27, 2012 and the tenant served the landlord with her application via registered mail on August 28, 2012.

I have made the decision to refuse the landlord's evidence as I have determined that the landlord had sufficient time to file evidence prior to the hearing, which I considered a willful failure to comply with the Rules for timely submission of evidence and as I also find that the applicant would be unduly prejudiced by the acceptance of the evidence.

Preliminary matter-At the beginning of the telephone conference call hearing, I introduced myself and asked if the tenant was on the telephone line. There was no answer. I then asked if the landlord was on the line, specifically using the name (YH) listed as landlord on the application. The response was "yes." Although the name appeared to be masculine, the voice answer was female. I then accepted that the listed landlord was female.

During the course of the hearing, I inquired as to a name appearing as payor on a cheque made payable to the tenant. The person who had been responding as the landlord during the course of the hearing said that this person was her.

I then questioned that person, VH, why she had been responding to the name I used, Mr. H, and she said because the listed landlord, YH, was not proficient in English.

Additionally, I was never informed that YH was attending the hearing, until this issue arose.

Issue(s) to be Decided

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

Background and Evidence

I heard undisputed testimony that this tenancy began on December 25, 2007 and that the tenant paid a security deposit of \$575.00.

The tenant said the tenancy ended on June 29, 2012, and the landlord said a final inspection was conducted on June 30, 2012.

The tenant said she communicated her written forwarding address via text message to the landlord on July 4, 2012.

The tenant said that she received a partial refund of her security deposit in the amount of \$405.00, but did not agree that any deductions could be made from her security deposit.

The tenant also said she was never given an opportunity to attend a final inspection.

The tenant has also claimed for compensation for \$39.17 for having to leave a day early and \$10.60 for researching the landlord's address.

The tenant contended that she was asked by the landlord to leave by June 29, 2012, to accommodate a new tenant moving into the rental unit on June 30, 2012. Additionally, the tenant said she expended sums in locating the landlord as they did not provide their address.

In response, the landlord said it was appropriate to make deductions due to the alleged damage caused by the tenant and the unclean condition of the rental unit. The landlord said that the tenant was given three opportunities to attend a final inspection, but failed to attend.

As to the receipt of the tenant's forwarding address, the landlord said she received the address via text message received in the time frame of July 5-7, 2012. Thereafter the landlord sent a cheque in the amount of \$405.00, said cheque being dated July 10, 2012.

The landlord denied asking the tenant to vacate early, and as proof, pointed out that the final inspection, which the tenant did not attend, occurred on June 30, 2012.

I confirmed with both parties that the method of communication between the parties during the tenancy was via text messaging.

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 tenant communicated her forwarding address in a text message transmission. Due to both parties' confirmation, I accept that this method of communication was the preferred method of communication between the parties.

Although the Act does not recognize text message transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's forwarding

address through the text message to the landlord, with the landlord's agreement, sufficiently served, pursuant to section 71 of the Act. I accept that the landlord had the tenant's forwarding address by July 7, 2012.

In the case before me, I find that the last day of the tenancy was June 30, 2012, the landlord received the tenant's written forwarding address by July 7, 2012, the tenant has not agreed to any deductions from her 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 July 22, 2012.

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

I must also address the landlord's contention that the tenant failed to attend a final inspection, which would have the impact of extinguishing the tenant's right to a return of her security deposit pursuant to section 36(1) of the Act.

Although the landlord said that three opportunities were given, the tenant said that she was not offered any opportunity.

I find the landlord submitted insufficient evidence to prove that they offered the tenant at least 2 opportunities to attend a final inspection, as required by section 35(2).

In reaching this conclusion, the landlord submitted a version of events and the tenant submitted a differing, equally probable version of events.

Neither party had any supporting witness statements or other evidence to rely upon to support their respective positions. For instance, the Residential Tenancy Branch ("RTB") provides a standard form which meets the requirements of the Act, but the landlord failed to provide such copy to prove the opportunity to inspect was offered to the tenant.

I find that disputed oral testimony does not sufficiently meet the burden of proof necessary for the landlord to prove that the opportunities to inspect were given to the tenant.

I therefore find the tenant did not extinguish her right to a return of her security deposit.

Due to the above, 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 double the base amount of her security deposit of \$575.00, plus interest.

As to the tenant's claim for having to leave early, I find the tenant submitted insufficient evidence that this was the case. I therefore dismiss her claim for \$39.17.

As to the tenant's claim for researching the landlord's address, I find I do not have authority under the Act to award costs in processing a claim, other than the filing fee. I therefore dismiss the tenant's claim for \$10.60.

I find the tenant's application had merit and I award her recovery of the filing fee of \$50.00.

I find the tenant is entitled to a monetary award of **\$803.80**, comprised of her security deposit of \$575.00, doubled, plus interest of \$8.80, and the filing fee of \$50.00, less the amount of \$405.00 previously paid to the tenant.

Conclusion

I grant the tenant a monetary order for \$803.80, and enclose it 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