



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on the tenant's application of October 2, 2012 seeking a Monetary Order for return of his security deposit after the planned tenancy in the landlord's motel did not materialize.

As a preliminary matter, as the tenancy was to take place in a motel, I have examined the application as to jurisdiction. On the fact that the tenant paid a deposit of \$240 with the intention of creating a tenancy, and as the landlord has submitted into evidence an undated copy of a receipt for that payment, and as the landlord advised that he has other long term tenants, I find on the balance of probabilities that this matter falls within the jurisdiction of the *Residential Tenancy Act*.

As to the receipt in question, the parties concur that it was issued a few days before September 15, 2012 as a deposit to hold a room. The receipt submitted by the landlord has an attachment that states, "Security Receipt" and written onto the receipt itself is the statement, "No Refund."

The landlord argued that, even though he provided the receipt, his copy does not state that it is a security receipt. However, I find on the undisputed fact that the tenant paid the deposit, a tenancy was created.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of the security deposit and should the amount be doubled as required by section 38(6) of the *Act*.

Background and Evidence

According to the tenant, the parties entered into an agreement a few days before September 15, 2012 that the landlord was to hold a room for him for occupancy on September 15, 2012 at what he believed was a rate of \$480 per month.

When the tenant was to move in, the landlord stated that rent was to pay \$480 plus tax every four weeks. The tenant stated that he believed his deposit had paid for the first half month of the tenancy and he did not have the funds available to pay the \$480 plus tax demanded by the landlord when he was to move in. Therefore, he was unable to move in.

The landlord stated that the \$240 he paid was not a security deposit and that his receipt had clearly stated that it was non refundable, and that the tenant owes him money for loss of rent.

Analysis

Section 5 of the *Act* states that landlord and tenants cannot contract outside of the *Act* and that a provision of an agreement that breaches the legislation is of no effect.

Section 20(e) of the *Act* states that a landlord must not, “require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.”

I find that the part of the agreement that states there is “No Refund” on the deposit is in breach of the *Act* and is, therefore, of no effect.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant’s forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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.

In the present matter, the tenant has not proven that he provided the landlord with his forwarding address in writing. However, the landlord submitted evidence on December 3, 2012 based on the tenant’s application. I find, therefore, that he has had the tenant’s address since before December 3, 2012, and he has not made application to claim the deposit or returned it.

Therefore, I find that the tenant is entitled to return of his security deposit and grant him a Monetary Order for \$240 for that purpose.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$240.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

The landlord remains at liberty to make application for losses resulting from the tenant not moving in.

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: December 27, 2012.

Residential Tenancy Branch