



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 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 documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, both parties confirmed not having filed documentary evidence.

I have reviewed all testimony; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and to recover the filing fee?

Background and Evidence

The tenant testified that this tenancy began on June 1, 2006, and ended on June 30, 2012, monthly rent was \$1400.00 and that he paid a security deposit of \$700.00 just prior to the tenancy beginning.

The landlord testified that this tenancy started on April 9, 2006 and ended on June 30, 2012. The landlord agreed that monthly rent was \$1400.00 and that the tenant paid a security deposit of \$700.00, on May 1, 2006.

The tenant did not contend that he provided the landlord a written forwarding address; however the tenant said that the landlord did have his new address. In explanation the tenant said during the approximate last 4 years of the tenancy, he did not reside in the rental unit; rather the tenant maintained the tenancy in his name and subleased the rental unit, collecting monthly rent from the subtenants and paying the landlord monthly rent.

The tenant said that each of the subtenants were introduced to and approved by the landlord and that the landlord always knew how to get in touch with him.

The landlord denied knowing the tenant's actual new or forwarding address as he never had occasion to use it.

Analysis

Section 38 of the *Act* requires that within 15 days of the end of a tenancy or the date the landlord receives the tenant's written forwarding address, whichever is later, the landlord is required to repay to the tenant the security deposit or file an application claiming against the deposit. In the event a landlord fails to comply with this provision of the *Act*, then the landlord must pay the tenant double the security deposit.

In the case before me, the tenant failed to submit proof that he transmitted a written forwarding address to the landlord within 15 days of the end of the tenancy and I therefore am unable to order that the landlord pay double the amount of the security deposit.

However, I find the tenant is entitled to a return of his security deposit as I find no evidence that he has authorized the landlord to make deductions from the security deposit or that the landlord had authority to retain the security deposit.

I therefore find the tenant has proven a total monetary claim of \$773.56, comprised of his security deposit of \$700.00, interest of \$23.56, and the filing fee of \$50.00.

I grant the tenant a monetary order for \$773.56 and it is enclosed 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.

Conclusion

The tenant is granted a monetary order in the amount of \$773.56

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: December 20, 2012.

Residential Tenancy Branch