



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF
 MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord requested that the spelling of the Tenant's surname be corrected. I noted that the Tenant's surname is one that is commonly misspelled. The Tenant confirmed the correct spelling during the hearing. Therefore, I amended the Landlord's application, pursuant to section 64(3)(c) of the Act.

Upon review of the applications for dispute resolution the Tenant advised that she did not receive the Landlord's typed submission and as a result she did not know why the Landlords had applied to keep her security deposit. A discussion followed whereby the Tenant's submission was reviewed and it was noted that in her written statement she noted the reasons she was told by the Landlords of why they wanted to keep her deposit. I explained that I could refuse to hear the Landlord's application but that it would only delay the matter until a future date as the Landlords would have leave to reapply. The Tenant advised that she wanted to proceed today with the Landlords' application. The Tenant acknowledged that she knew why the Landlords had applied to keep her deposit.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlords and the Tenant.

The Landlords filed on January 10, 2013 to obtain a Monetary Order to keep the security deposit and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on October 26, 2012 to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlords for her application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlords be awarded a Monetary Order?
2. Should the Tenant be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included their written statement. The Tenant affirmed that she did not receive a copy of this statement.

The Tenant submitted documentary evidence which included their written statement which the Landlord confirmed receipt of.

The following facts were not in dispute:

- The parties entered into a written fixed term tenancy that began on July 8, 2012 and was set for one year.
- Rent was payable on the first of each month in the amount of \$900.00 and by August 1, 2012 the Tenant had paid \$450.00 as the security deposit and \$100.00 as the pet deposit.
- No move in or move out condition inspection report forms were completed.
- On September 24, 2012, the Tenant provided verbal notice to end the tenancy and returned possession of the unit to the Landlord on September 30, 2012.
- The Tenant provided the Landlords with her forwarding address on October 2, 2012.
- On October 17, 2012 the Landlords gave the Tenant \$150.00 cash which was the return of her \$100.00 pet deposit and \$50.00 from the security deposit.

The Landlord affirmed that they advertised the unit right away and were not able to re-rent the unit until October 15, 2012. They kept \$400.00 of the security deposit because they lost rent for half of October 2012 and because the Tenant did not give them notice to end her tenancy in writing. He confirmed that he does not have the Tenant's written permission to keep the deposit, he does not have an Order authorizing him to keep the deposit, and he did not make application to keep the deposit before January 10, 2013.

In closing the Tenant stated that she was initially told they had re-rented the unit for October 1, 2012 which is why she rushed to be out by September 30th.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's application

The evidence supports the Tenant ended her fixed term tenancy, in breach of section 45 of the Act. The Landlords did what was reasonable by advertising the unit right away and re-renting it as soon as possible; however the Landlords were not able to re-rent the unit until October 15, 2012.

Notwithstanding the Landlords' application to keep the security deposit, I find the Landlords were seeking to keep the deposit to offset their claim for monetary compensation for money owed or compensation for damage or loss suffered due to the Tenants' breach of the Act, regulation or tenancy agreement

Based on the above, the Landlords suffered a loss of half of a month's rent due to the Tenant's breach. Accordingly, I award the Landlords lost rent in the amount of **\$450.00** (\$900.00 divided by 2).

The Landlords have been successful with their application; therefore, I award them recovery of their filing fee in the amount of **\$50.00**.

Tenant's application

The tenancy ended September 30, 2012, when the Tenant vacated and the Landlords regained possession of the unit. The Tenant provided the Landlords with her forwarding address on October 2, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address the landlord must repay the security and pet deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenant's security and pet deposits in full or file for dispute resolution no later than **October 17, 2012**. The Landlords returned the pet deposit in full and \$50.00 of the security deposit; however, they retained \$400.00 of the security deposit and did not make an application to keep the deposit until January 10, 2013.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Upon review of the foregoing, I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the balance owed of her security deposit plus interest in the amount of **\$850.00** (2 x \$450.00 - \$50.00 returned + \$0.00 interest) .

I find that the Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Offset Monetary Awards

| | |
|--|------------------------|
| Tenant's monetary award + filing fee | \$900.00 |
| LESS: Landlords' monetary award | <u>\$500.00</u> |
| OFFSET AMOUNT DUE TO THE TENANT | <u>\$400.00</u> |

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$400.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not 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: January 28, 2013

Residential Tenancy Branch

