



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") for a monetary order for the return of her security deposit and pet damage deposit and recovery of her filing fee.

The tenant appeared first in the hearing and gave affirmed testimony. The landlord appeared nine minutes after the hearing began and gave affirmed testimony.

The parties 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.

Neither party raised any issues regarding service of the application. However, the landlord said and the tenant confirmed that the tenant had not sent to the landlord her evidence package received by the Residential Tenancy Branch ("RTB"), sent January 10, 2013.

In explanation, the tenant said that the landlord previously had been sent or had in possession the documents in the evidence package. I found I did not need to rely on the evidence package of January 10, 2013; however, I relied upon the earlier evidence submissions of the tenant, confirmed received by the landlord, and the landlord's evidence.

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 tenant's application contained in the RTB file shows the surname of the landlord to be different than the evidence submitted by the landlord. The tenant said that the listed name was the landlord's name used throughout the tenancy and that the landlord since has changed her surname as she married in August 2012.

The tenant said that she did change this name on her application and had proof that the change was faxed into a government agent's office.

The landlord confirmed that her surname had changed in August 2012, due to her marriage, and that she had used the listed surname through the tenancy until that time.

As a result, I have listed the landlord's current name as noted in the style of 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 undisputed evidence shows that this tenancy began on December 17, 2011, ended on or about September 28, 2012, monthly rent was \$450.00 and the tenant paid a security deposit of \$225.00 and a pet damage deposit of \$200.00 at the beginning of the tenancy.

The tenant said that the landlord was provided her written forwarding address on September 28, 2012, by her, the tenant's, sister.

The tenant stated that the landlord has sent her mail at her new address since the end of the tenancy.

The tenant stated that the landlord has not returned her security deposit or pet damage deposit, despite repeated requests, and is seeking monetary compensation for their return.

The tenant also said that the landlord never provided an opportunity for a move-in or move-out inspection.

The tenant also submitted a letter sent to the landlord, which the landlord confirmed receiving, again requesting her deposits to be returned.

The landlord acknowledged receiving the tenant's written forwarding address on a piece of cardboard-like paper on September 28, 2012, and that has not filed for dispute resolution. The landlord stated that she is entitled to keep the tenant's security deposit and pet damage deposit due a verbal agreement she had with the tenant for a partial retention and due to the state of the rental unit at the end of the tenancy.

The landlord said the tenant failed to attend the final inspection, which was the reason she had a witness sign the report. The landlord also contended that the tenant's sister was not able legally to sign the report.

The landlord further acknowledged that she has not returned the tenant's security deposit and pet damage deposit.

Analysis

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

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit and pet damage 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 and pet damage deposit.

In the case before me, the undisputed evidence show that the landlord received the tenant's written forwarding address and the last day of the tenancy was September 28, 2012, the landlord has not applied for arbitration claiming against the security deposit and pet damage deposit, and has not returned any portion of the tenant's security or pet damage deposit.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant. Here the landlord submitted insufficient evidence that the tenant agreed to any deductions from her two deposits and did not show any such authority to keep any portion of the security or pet damage deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit and pet damage deposit, and under section 38 I must order the landlord to pay the tenant double her security deposit and pet damage deposit.

I therefore find the tenant has established a monetary claim in the amount of \$900.00, comprised of her security deposit of \$225.00, doubled to \$450.00, her pet damage deposit of \$200.00 doubled to \$400.00, and for recovery of the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$900.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

Conclusion

I grant the tenant's application and have issued a monetary order for the sum of \$900.00. The landlord is directed to forthwith transmit the amount of \$900.00 to the tenant.

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: January 18, 2013

