



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 an Application for Dispute Resolution filed on November 8, 2012, by the Tenant to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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

Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: an amended application for dispute resolution; and Canada Post receipts.

The Landlord submitted documentary evidence which included, among other things, copies of: receipts for cleaning supplies and cleaning; Canada Post receipts, and a letter written by the Landlord January 15, 2013.

The following facts were discussed and agreed upon during the course of this hearing:

- The parties entered into a month to month tenancy that began on September 1, 2007;
- The subsidized rent was adjusted throughout the tenancy and rent was payable in the amount of \$569.00 per month during the last year of tenancy;

- On September 1, 2007 the Tenant paid \$400.00 as the security deposit based on market value rent;
- No condition inspection report forms were completed at the onset or at the end of the tenancy;
- The Tenant ended the tenancy effective June 30, 2012 after providing a written one month's notice on May 31, 2012;
- The Landlord received the Tenant's forwarding address, in writing, on May 31, 2012.

The Landlord confirmed that they have not returned the Tenant's security deposit; they do not have the Tenant's written permission to keep the deposit; they do not possess an Order issued by the *Residential Tenancy Branch* authorizing them to keep the security deposit; and they have not made an application for dispute resolution to claim against the deposit.

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*.

I have carefully considered all of the evidence before me and I find that the tenancy ended June 30, 2012, and the Tenant provided the Landlord with her forwarding address, in writing, on May 31, 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 in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 15, 2012.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlords is 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 and pet deposit and the landlord must pay the tenant double the security deposit plus interest.

Based on the foregoing I find that the Tenant has met the burden of proof and I approve her claim for the return of double her security deposit plus interest in the amount of **\$808.04** (2 x \$400.00 + \$8.04).

The Tenant has succeeded with her application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$858.04** (\$808.04 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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: February 13, 2013

Residential Tenancy Branch

