



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

I have reviewed all oral and written evidence 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- At the outset of the hearing, evidence was discussed, as the landlord inquired as to whether or not I received their evidence said to be faxed into the Residential Tenancy Branch ("RTB") on Monday prior to the hearing. Although the evidence was not in the hearing file, I did have access to the evidence. The landlord said that she did not send her evidence to the tenant; as a result, I have excluded the landlord's evidence for consideration due to the landlord's non-compliance with the Residential Tenancy Branch Rules of Procedure (Rules), which stated that the party submitting evidence must send a like copy to the RTB and to the other party.

Although I have excluded the landlord's evidence, their evidence would have no impact upon this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of her security deposit and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on August 31, 1994, ended on September 30, 2012, and that the tenant paid a security deposit of \$275.00 on or about August 31, 1994.

The tenant has asked to have a monetary order for the amount of her security deposit of \$275.00, doubled, and for recovery of the filing fee.

The tenant said that she filed her application for dispute resolution against the landlord on November 9, 2012 and sent the Notice of Hearing and her Application via registered mail on that date; however, on that date she was not aware that the landlord's address had changed. The tenant said when she arrived home after work on the same day, there was a letter from the landlord, including a cheque for \$175.00, listing a different address. The tenant said that she has redeemed the cheque.

The tenant said that there was a notice shortly thereafter from Canada Post alerting her to the registered mail being returned and when it was, she filed her amended application for dispute resolution and served it upon the landlord.

The landlord agreed having received the application for dispute resolution.

Both parties agreed that the tenant provided her written forwarding address on September 30, 2012, on the "Check-Out Condition" report and that the tenant authorized the landlord to retain \$100.00 from her security deposit for carpet cleaning.

I note that the cheque for the return of the balance of the tenant's security deposit, \$175.00, was dated October 20, 2012, although the tenant said she did not receive it until November 9, 2012.

Landlord's response-The landlord agreed that the cheque for the balance of the security deposit was written on October 20, 2012 and mailed to the tenant via regular mail that date. The landlord did not supply independent proof of the date the cheque was actually mailed.

The landlord did not present that they had filed an application for dispute resolution of their own.

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, less any amount the tenant has authorized in writing the landlord may retain, or to file an application for dispute resolution to retain the security 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.

In the case before me, the undisputed evidence shows that the landlord received the tenant's written forwarding address on September 30, 2012, the last day of the tenancy, the tenant agreed in writing to a deduction of \$100.00 from her security deposit, and the landlord has not applied for arbitration claiming against the balance of the security deposit.

The landlord was therefore required to return the balance of the tenant's security deposit, in the amount of \$175.00, plus interest, by *October 15, 2012*.

As the landlord's own evidence shows that the cheque for the balance of the security deposit was not written until October 20, 2012, I find that the landlord has breached their obligation under section 38.

I allow the tenant recovery of her filing fee of \$50.00.

I therefore find the tenant has proven a monetary claim of \$458.00, comprised of the portion of her security deposit that the landlord was not authorized to retain, or \$175.00, doubled to \$350.00, interest on the original security deposit in the amount of \$58.00, and the filing fee of \$50.00.

I grant the tenant a monetary order for \$458.00 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. Costs of enforcement may be recoverable from the landlord.

Conclusion

The tenant's application is granted and she is granted a monetary order for \$458.00.

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: February 08, 2013

Residential Tenancy Branch