



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and / or were represented at the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 1, 2011 to July 31, 2012. Monthly rent of \$6,000.00 is due and payable in advance on the first day of each month, and a security deposit of \$3,000.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

By e-mail dated July 30, 2012, the tenant provided the landlord with what was his forwarding address "until further notice."

On July 31, 2012, a move-out condition inspection report was completed with the participation of both parties. The tenant's forwarding address, as above, is also provided on the move-out condition inspection report.

Despite the tenant's provision of his forwarding address, after the end of tenancy the landlord contacted the tenant's son in mid-August with a request to know where to send repayment of the security deposit. As the tenant's son was apparently unaware that the tenant had already instructed the landlord with regard to the address for repayment of the security deposit, the landlord's son provided his own address for the purposes of repayment.

Ultimately, the landlord withheld a total of \$1,996.75 from the \$3,000.00 security deposit, as follows:

\$1,324.36: *utilities*
\$78.39: *ceramic rods barbeque*
\$100.00: *painter*
\$384.00: *cleaner*
\$110.00: *light bulbs*

The landlord repaid the balance of \$1,003.25 (\$3,000.00 - \$1,996.75) to the tenant by way of cheque. The above cheque was put into the mail on September 10, 2012 and was received on September 14, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

First, the attention of the parties is drawn to certain sections of the Act which are particularly relevant to the circumstances of this dispute. Section 5 of the Act provides that **This Act cannot be avoided**:

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the unit reasonably clean, and undamaged except for reasonable wear and tear,

Following the tenant's receipt of the landlord's cheque and his consideration of her statement of accounting for the disposition of the security deposit, in his application he states that his agreement with certain withholding is limited to \$1,424.36, as follows:

\$1,324.36: *utilities*

\$100.00: *painter*

During the hearing, the tenant's son / agent noted that the move-out condition inspection report does not reflect any documented concerns on the landlord's part with regard to the remaining three items for which the landlord withheld a portion of the security deposit. While the landlord did not place her signature on the move-out condition inspection report, all areas of the house identified on the report are manually noted as "same as before" with the landlord's initials affixed alongside. During the hearing the landlord testified that she felt somewhat pressured to provide her initials in this way during the final phase of the move-out condition inspection.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and testimony, I find that the landlord neither repaid the full security deposit, nor applied for dispute resolution within 15 days after July 31, 2012, which is the date I find that the tenant provided his forwarding address in writing. Accordingly, I find that the tenant has established entitlement to the double return of the security deposit in the total amount of \$6,000.00 (2 x \$3,000.00).

Subtracted from the statutory entitlement of \$6,000.00, is the amount the tenant has agreed to the landlord's withholding of \$1,424.36 (\$1,324.36 + \$100.00), as above, leaving a balance owed of \$4,575.64 (\$6,000.00 - \$1,424.36).

As the landlord has already repaid \$1,003.25, the amount still owed from the security deposit is \$3,572.39 (\$4,575.64 - \$1,003.25).

Finally, as the tenant has succeeded with his application, I find that he has also established entitlement to recovery of the \$50.00 filing fee. Accordingly, I find that the

tenant has established a total entitlement of **\$3,622.39** (\$3,572.39 + \$50.00), and I hereby issue a **monetary order** in favour of the tenant for that amount.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$3,622.39**. Should it be necessary, this order may be served on the landlord, filed in the 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: March 20, 2013

Residential Tenancy Branch

