



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 January 18, 2013, by the Tenant to obtain a Monetary Order for the return of double their security deposit plus recovery of the filing fee.

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 issued a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: an unsigned cheque dated December 4, 2012; the envelope in which the unsigned cheque was mailed; Canada Post receipts and a CD of evidence.

The Landlords did not submit documentary evidence.

The parties agreed that they entered into a verbal tenancy agreement that began on approximately June 1, 2007 and ended November 24, 2012. Rent was payable on the first of each month in the amount of \$1,100.00 and on or before June 1, 2007 the Tenant paid \$500.00 as the security deposit. No move in or move out condition inspection report forms were completed however the parties and the Tenant's witness conducted a move out walk through on November 25, 2012. The Tenant provided the Landlords with his forwarding address in writing on November 25, 2012 and again on December 19, 2012.

The Tenant testified that he received the unsigned cheque from the Landlords on January 3, 2013. The cheque was dated December 4, 2012 for \$500.00 and the post mark on the envelope shows it was mailed on December 11, 2012. Once he received the cheque both he and his witness attempted to contact the Landlords by leaving several messages and sending text messages and he still has not received a replacement cheque.

The Landlord testified that her husband made a mistake by not signing the cheque. She confirmed that a replacement payment has not been sent to the Tenant; however, in early January her husband had a conversation with the Tenant and told him that he could come and pick up his money but he refused. She stated that she did not know why the payment was not sent to the Tenant after he refused to pick it up.

The Landlord stated that they do not have an order authorizing them to keep the deposit; they do not have the Tenant's written permission to keep it; and they have not made application to keep the deposit.

The Agent for the Landlord indicated that he had faxed a document to the *Residential Tenancy Branch* explaining that the male Landlord was detained and authorizing him to speak on behalf of him. He did not send this information to the Tenants so I explained that I could not consider his submission because the Tenant was not served with a copy. The Agent stated that the Landlord's cell phone was his work phone and he had been monitoring the Landlord's cell phone and text messages for the employer because the Landlord was detained. He noted that the unsigned cheque was signed on the back by the Landlord instead of the front of the cheque in error.

The Tenant confirmed that he had a conversation with the Landlord on January 14, 2013, and the Landlord did tell him to come and pick up his money. He stated that he refused because it was past his breaking point and because he did not want to be in the presence of the Landlord due to the way their relationship ended. He stated that he

was very concerned that the Landlords not be given access to his current address which is why he provided the Landlords a postal box for a service address.

Analysis

The undisputed evidence was the Tenant vacated the rental unit by November 24, 2012 and the move out was conducted on November 25, 2012. Accordingly, I find the tenancy ended November 25, 2012 and that the Tenant provided the Landlords with his forwarding address in writing on November 25, 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 Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than December 10, 2012. The Landlord sent an unsigned cheque in priority mail on December 11, 2012. Section 90 of the *Act* stipulates that service by mail is deemed to be received five days after it was mailed. Therefore, the Tenant is deemed to have received the unsigned cheque on December 16, 2012.

Notwithstanding the Landlord and Agent's submission that it was a mistake or an error that the cheque was signed on the back, I find the Landlords have failed to comply with Section 38(1) of the *Act*. I make this finding in part because the cheque had to have been mailed no later than December 5, 2012 to allow mail delivery to ensure it was received within the required time frame and it had to be for the full amount of the deposit plus the required interest of \$11.96.

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 plus interest.

Based on the aforementioned I find the Tenant has met the burden of proof to establish his claim and I award him double his security deposit plus interest in the amount of **\$1,011.96** (2 x \$500.00 + \$11.96 interest).

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

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,061.96** (\$1,011.96 + \$50.00). 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: April 17, 2013

Residential Tenancy Branch