



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application filed December 13, 2012: MND, MNR, MNSD, MNDC, FF, SS

Tenant's application filed February 14, 2013: MNSD, FF

Introduction

This matter was scheduled to consider cross applications. The Landlord seeks compensation for damage or loss under the Act, regulation or tenancy agreement; a monetary award for unpaid rent and damage to the rental unit; to apply the security and pet damage deposits towards partial satisfaction of his monetary award; an Order allowing the Landlord to serve documents or evidence in a different way than required by the Act; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks return of his security and pet damage deposit, doubled in accordance with the provisions of the Act; and to recover the cost of the filing fee from the Landlord.

This Hearing commenced on March 8, 2013, and was adjourned to April 10, 2013, as a result of the Landlord's agent's application. An Interim Decision was provided on March 8, 2013, which should be read in conjunction with this Decision.

Preliminary Matters

Regarding Service

It was determined that the Landlord served the Tenant with his Notice of Hearing documents by registered mail. The Tenant acknowledged receipt of the Notice of Hearing documents around the end of December, 2012. The Landlord did not provide any documentary evidence to the Tenant or to the Residential Tenancy Branch.

The Tenant testified that he sent his Notice of Hearing documents and copies of his documentary evidence to the Landlord's address, by registered mail, on February 17, 2013. The Landlord's agent ("MM") testified that she found the documents in the Landlord's mail box in March, 2013. The Tenant's documents included electronic

evidence contained on a flash drive that I was not able to open. The Tenant indicated that he also provided hard copies of the photographs that were on the flash drive.

Regarding the Landlord's Application

The Landlord's Application for Dispute Resolution includes a request for substituted service; however, the Landlord did not provide any details with respect to why he wanted to serve the Tenant in a manner not provided in the Act, or how he proposed to serve the Tenant. Therefore, this portion of the Landlord's application is dismissed.

The Landlord's agent stated that she did not have sufficient knowledge of the tenancy to provide testimony with respect to the Landlord's claim. Except for attaching an itemized list of "costs" to his Application, the Landlord provided no documentary evidence in support of his claim.

The Landlord has the burden of proof to establish his claim. I find that the Landlord did not provide sufficient evidence to support his claim and the Landlord's agent was not able to provide any testimony. Therefore I dismiss the Landlord's claim without leave to reapply.

Issues to be Decided

- Is the Tenant entitled to a monetary award in the equivalent of double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This month-to-month tenancy ended on November 30, 2012, as a result of the Tenant's written notice to end the tenancy provided on October 31, 2012. The Tenant provided the Landlord with written notification of his forwarding address on November 30, 2012.

The Landlord is holding a security deposit in the amount of \$1,490.00 and a pet damage deposit in the amount of \$1,490.00.

The Tenant stated that the Landlord did not require the Tenant to participate in a move-out Condition Inspection Report. The Tenant testified that he cleaned the rental unit and shampooed the carpets at the end of the tenancy and that he left the rental unit undamaged. The Tenant stated that he did not agree that the Landlord could keep any of the deposits. The Tenant seeks return of the deposits and compensation pursuant to the provisions of Section 38(6) of the Act, for a total amount of \$5,960.00.

Analysis

The security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's **written consent** to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. **repay the security deposit** in full, together with any accrued interest; **or**
2. **make an application** for dispute resolution claiming against the security deposit.
(emphasis added)

In other words, a landlord may not keep the security deposit without the Tenant's written permission or an Order of the Director allowing the Landlord to apply the security deposit towards damages or unpaid rent.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

In this case, I the Landlord made an application for dispute resolution claiming against the security deposit on December 13, 2012, which is within the 15 days required under Section 38(1) of the Act. Therefore, I find that the Tenant is not entitled to compensation pursuant to the provisions of Section 38(6) of the Act.

However, I do find that the Tenant is entitled to return of the deposits and I grant that portion of his application.

The Tenant has been partially successful in his application and I find that he is entitled to recover half of the cost of the filing fee from the Landlord, in the amount of **\$50.00**. Therefore, the Tenant has established a total monetary award of **\$3,030.00** against the Landlord.

Conclusion

The Landlord's application is **dismissed without leave to reapply**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$3,030.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 24, 2013

Residential Tenancy Branch

