



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for return of the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

This matter was scheduled to be heard on March 1, 2013. At that Hearing, the Tenant testified that she served the Landlord with the Notice of Hearing documents by handing the documents to the Landlord at the Landlord's residence on December 1, 2012 at 3:00 p.m.

The Landlord stated that she was not served with the Notice of Hearing documents and only found out about the Hearing after the Tenant e-mailed her 2 days prior to the Hearing. She stated that she phoned the Residential Tenancy Branch and was given the teleconference sign-in information.

The matter was adjourned to allow the Tenant to re-serve the Landlord with the documents, by registered mail. An Interim Decision was provided to the parties, which should be read in conjunction with this Decision.

The Tenant testified that she re-served the Landlord with the Notice of Hearing documents and copies of her documentary evidence by registered mail sent March 11, 2013. The Tenant provided the tracking number for the registered documents.

The Landlord stated that she received the Notices to pick up the registered mail, but didn't pick it up.

The Landlord didn't provide any documentary evidence to the Residential Tenancy Branch or the Tenant.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began in October, 2001 and ended on July 27, 2012. There was no written tenancy agreement; however, the parties agreed that monthly rent was \$925.00, not including utilities. The Tenant testified that she paid a security deposit in the amount of \$500.00 at the beginning of the tenancy. The Landlord stated that the Tenant paid only \$300.00 in cash, for which the Landlord provided a receipt.

The parties conducted a “walk-through” of the rental unit at the beginning of the tenancy, but no Condition Inspection Report was produced that meets the requirements of Part 3 of the regulation.

The Tenant stated that she provided the Landlord with written notification of her forwarding address in September, 2012. The Landlord did not agree, and stated that the Tenant provided her with written notification of her forwarding address on August 20, 2013.

The Tenant stated that she did not give the Landlord permission to keep any of the security deposit.

Analysis

The parties disagreed with respect to the amount of the security deposit that was paid at the beginning of the tenancy. This is the Tenant’s application and therefore the onus is on the Tenant to provide sufficient evidence to prove her claim on the balance of probabilities. I find that the Tenant provided insufficient proof that she had paid \$500.00. However, the Landlord admitted that the Tenant paid \$300.00, and **therefore I find that the Landlord is holding the Tenant’s security deposit in the amount of \$300.00.**

A 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.

The Landlord testified that she received the Tenant's forwarding address in writing on August 20, 2013. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

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. Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, in the amount of **\$600.00**. No interest has accrued on the security deposit.

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$650.00** 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 25, 2013

Residential Tenancy Branch

