



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Heatherlea Apartments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and a monetary order for a return of his security deposit.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties 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.

At the outset of the hearing, the landlord's agent (hereafter referred to as landlord) said that she received a CD underneath her door as evidence for another hearing. The tenant acknowledged receiving the landlord's evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-I have not accepted the tenant's evidence contained on the CD as the tenant failed to comply with section 11.8 of the Rules, which require the party submitting digital evidence contact the other party at least 5 days in advance of the hearing, the landlord in this case, to ensure they had access to view the evidence.

Preliminary issue #2-During the hearing, reference was made to the tenancy agreement, with the tenant submitting that his copy of the tenancy agreement did not

contain the same handwritten notations that the landlord's copy contained. I therefore allowed the tenant to submit his tenancy agreement after the hearing, and he did so.

Issue(s) to be Decided

Is the tenant entitled a monetary order for a return of his security deposit?

Background and Evidence

The evidence shows that this tenancy began on October 1, 1992, for a beginning monthly rent of \$730 and that the tenancy on December 1, 2012.

The tenant's monetary claim is \$700, doubled the amount of his original security deposit of \$350, as the security deposit has not been returned to him.

The tenant acknowledged that the landlord did send him a cheque in the amount of \$252.98, but that he has not cashed or deposited the cheque.

The landlord agreed that the landlord received the tenant's written forwarding address on November 30, 2012.

The landlord's position is that they complied with section 38 of the Act, due to their contention that the original security deposit was \$200, and that this amount plus interest was returned to the tenant within 15 days of the end of the tenancy.

The point of contention in this matter was the tenancy agreement. The tenancy agreement submitted by the landlord showed that the printed clause regarding the amount of the security deposit directly above the monthly rent listed was left blank; however, to the side of this clause were hand written notations, more particularly the notation said that a rent deposit cheque of \$350 was received and separately and underneath, the notation said that a security deposit of \$200 was received on September 18 '92.

The tenant argued that his tenancy agreement showed that only a payment of \$350 was received, noting that it was for a rent deposit cheque.

The tenant said that his recollection was that the \$350 was the security deposit and that he knew nothing about the \$200 payment.

The landlord then contended that, although she was not involved with this tenancy from the beginning, she has been associated with the landlord for a number of years as there are a number of older tenancies. The landlord said that the history of the older tenancies show that a “rent deposit” was collected to hold the rental unit open and that the deposit, usually half the amount of the first month’s rent, was applied to the first month’s rent. The landlord also said that the history of the accounts showed that the landlord collected a flat rate of \$200 for security deposits from tenants during this time period.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

Under section 38 of the Residential Tenancy Act, at the end of a tenancy a landlord is required to either return a tenant’s security deposit 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, less any deductions agreed to by the tenant, unless the tenant’s rights to receive the deposit have been extinguished. I do not find that to be the case here.

If a landlord fails to comply with this section, then the landlord must pay the tenant double the amount security deposit.

In the case before me, I could not rely on the landlord’s copy of the tenancy agreement as it contained different handwritten notations than the tenant’s copy. I therefore concluded, based upon a balance of probabilities, that the landlord made alterations to the tenancy agreement after the tenant had signed and been given the document.

Due to this, I accept the tenant’s version of the tenancy agreement, and concluded that the tenant paid a deposit at the beginning of the tenancy, which I have categorized as a security deposit in the absence of any accounting records from the landlord at the beginning of the tenancy to show otherwise the payment of two deposits.

I therefore find the landlord failed to return the full amount of the security deposit of \$350 within 15 days of the end of the tenancy and the end of the tenancy and under section 38 I must order the landlord to pay the tenant double his security deposit of \$350.

I therefore find the tenant has proven a total monetary claim of \$539.17, comprised of his security deposit of \$350, doubled to \$700.00, interest on the original deposit in the amount of \$92.15, less the amount previously paid to the tenant, \$252.98.

Conclusion

The tenant's application is granted.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$539.17, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recoverable from the landlord.

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: April 25, 2013

Residential Tenancy Branch