



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rosewood Center
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking monetary compensation for the return of his security deposit, doubled, and for recovery of the filing fee.

The tenant appeared; the landlord did not appear.

The tenant gave evidence that she served the landlord with her Application for Dispute Resolution and Notice of Hearing leaving it with the landlord's agent on February 23, 2013, at the head office for the landlord.

I find the landlord was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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.

Issue(s) to be Decided

Is the tenant entitled to recover her security deposit, doubled, other fees, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 1, 2011, ended on or about January 31, 2013, monthly rent was \$1100 and the tenant paid a security deposit of \$550 at the beginning of the tenancy.

The tenant said that the landlord was provided her written forwarding address on December 31, 2012, in a letter which also served as the tenant's notice to end the tenancy effective on January 31, 2013. The tenant provided a copy of the letter, on which the landlord acknowledged receipt on December 31, 2012.

The tenant testified that sometime after February 15, 2013, the landlord sent her a cheque in the amount of \$500, noting that a deduction of \$50 was made for damage to the wall. The tenant submitted that she did not agree to any deductions.

I note that the letter supplied by the landlord to the tenant when returning \$500 indicated that the cheque was paid in February, which upon close examination appears to be February 15, as date stamped by the landlord; however there also was a handwritten "3" over the "5" in the date stamp.

The tenant supplied a copy of the cheque itself.

The tenant said that she received an additional cheque in the amount of \$100 the day prior to the hearing.

The tenant submitted that the landlord also has failed to return the \$20 pool key deposit, for which she is also claiming.

The tenant also mentioned that she paid a membership fee; however as the tenant did not supply a copy of her tenancy agreement, I was unable to examine if this fee was refundable under the Act or Residential Tenancy Branch Regulations. I allowed the tenant to fax her tenancy agreement to me, provided the document was transmitted by the close of business the day following the hearing.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38 of the 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. If a landlord fails to comply, then the landlord **must** pay the tenant double the security deposit and pet damage deposit.

In the case before me, the undisputed evidence shows that the landlord received the tenant's written forwarding address on December 31, 2012, the last day of the tenancy was January 31, 2013, and the tenant has not agreed to any deductions from her security deposit. I have no evidence before me that the landlord has applied for arbitration claiming against the security deposit.

The landlord was therefore required to return the full amount of the tenants' security deposit by February 15, 2013.

However, in contravention of the Act, the landlord deducted an amount from the tenant's security deposit without authority prior to returning the remaining portion.

The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or with the written agreement of the tenants. Here the landlord did not have any such authority to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or pet damage deposit, and under section 38 I must order the landlord to pay the tenant double her security deposit.

As to the tenants' claim for a return of her pool key deposit of \$20, pursuant to Residential Tenancy Branch Regulations #6, a landlord may charge for such a key so long as the key deposit is refundable. I find that to be the case here and the landlord must also return this deposit.

As to the tenant's request for a membership fee, after a review of the tenancy agreement I do not find that this fee was part of the tenancy agreement and I have therefore declined to consider this issue.

I find merit with the tenant's application and therefore grant her recovery of the filing fee of \$50.

Due to the above, I find the tenant has proven a total monetary claim of \$570, comprised of her security deposit of \$550, doubled to \$1100, the pool key deposit of \$20, and the filing fee of \$50, less the amount previously paid to the tenant, \$600.

I grant the tenant a monetary order for \$570 and it is enclosed with the tenant's Decision. This order is a legally binding, final order, and should the landlord fail to pay the tenant this amount without delay, 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 are subject to recovery from the landlord.

Conclusion

The tenant has proven a total monetary claim of \$570 and I have granted her a monetary order in that amount.

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: May 21, 2013

Residential Tenancy Branch

