



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenant's application for return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by registered mail sent February 2, 2013.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit?
- Is the Tenant entitled to a monetary award because a new occupant moved into the rental unit before the end of the tenancy?

Background and Evidence

The Tenant testified that she gave the Landlord notice to end the tenancy on June 25, 2012, effective July 31, 2012. The Tenant paid full rent for the month of July. The Landlord is holding the Tenant's security deposit in the amount of \$400.00.

The Tenant stated that she had already moved out of the rental unit to another province and that a friend ("Kathryn") had agreed to act as her agent for the purposes of winding down the tenancy. With the Tenant's and the Landlord's permission, Kathryn made arrangements for another person to move in a few days before July 31, 2012. The new occupant moved into the rental unit on or about July 23, 2012.

The Landlord did not require the Tenant or her agent to participate in a condition inspection at the end of the tenancy.

The Tenant stated that she assumed that she would be getting refunded partial rent from July 23 to 31, 2012, but the Landlord will not give it to her. The Landlord testified that the new occupant did not pay any rent for July 23 – 31, 2012. He stated that the new occupant moved some furniture into the rental unit, but did not fully move in until July 31, 2012. The Landlord stated that he had no idea that the Tenant would be seeking a refund of rent until Kathryn asked him for it in September, 2012.

The Tenant testified that the Landlord was out of the country in July, so she mailed her forwarding address to the rental property, to the attention of the Manager on July 25, 2012. The Landlord testified that he did not receive the Tenant's forwarding address until he was served with the Notice of Hearing documents in February, 2013.

The Tenant testified that when she had no word from the Landlord, she made several unsuccessful phone calls to the Landlord when she was back in the area in September, 2012. She stated that by the time she finally reached the Landlord, he told her that he was surprised that his son had not returned the Tenant's security deposit and suggested that she come and pick it up. However, by the time she was able to get a hold of the Landlord, it was too late for her to pick up the security deposit before she had to fly back to Quebec.

The Landlord stated that when he spoke to the Tenant in September, he advised her that he had no problem with returning the Tenant's security deposit to the Tenant, but the Tenant said she did not have time to meet with him because she had to catch a flight.

The Tenant testified that she made arrangements with the Landlord for Kathryn to pick up the security deposit instead, along with the \$200.00 refund for July rent. She stated that when Kathryn went to pick up the money, the Landlord argued with Kathryn that he did not owe any money for refunded rent, so Kathryn left without any of the security deposit or the rent refund.

The Landlord provided a written statement from his son, who was acting as the Landlord's agent from July 12 to August 23, 2012 while the Landlord was away. The Landlord's son wrote that Kathryn called him several times during the month of August to pick up the damage deposit in cash. The Landlord's son wrote that he would not give it to her in cash and asked for the Tenant's address so he could mail a cheque, however he never received the Tenant's forwarding address.

Analysis

Based on the testimony of both parties, I find that the Tenant has not provided sufficient evidence to support her claim for partial return of July's rent. The Landlord testified that he collected no rent from the new occupant for July, 2012. Without proof to the contrary, I dismiss this portion of the Tenant's claim.

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 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 disputed that he or his agent received the Tenant's forwarding address in writing in July, 2012. He testified that he did not receive the Tenant's forwarding address in writing until February, 2013, but did not explain why he did not return it within 15 days or make an application against it. In fact, the Landlord accepted that he had no reason to keep the security deposit.

The Landlord and his agent were correct in not providing the Tenant's agent with the security deposit in August, 2012. Section 38(8) requires a landlord to either return the security deposit directly to the tenant or to use a service method described in Section 88(c), (d) or (f) of the Act for the purposes of returning a security deposit. However, I find that the Landlord did not return the deposit or file an application against it within 15 days of receiving the Tenant's forwarding address in February, 2013.

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 **\$800.00**. No interest has accrued on the security deposit.

The Tenant has had some success 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 **\$850.00** 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: May 02, 2013

Residential Tenancy Branch