



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF: O

Introduction

This is the Tenant's application for a monetary order for double the security deposit; to recover the cost of the filing fee from the Landlord; and "other" relief.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail, sent on February 15, 2013.

The Landlord did not provide any documentary evidence to the Tenant or to the Residential Tenancy Branch.

Preliminary Matters

The Tenant's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide sufficient details in her Application with respect to what other relief she is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is dismissed.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The Tenant was residing in Alberta and was seeking temporary accommodation in Kelowna. In January, 2013, the Tenant saw an on-line advertisement for the rental unit. Based on the description and links provided in the on-line ad, she made an agreement

with the Landlord to rent the rental property from February 1, 2013 to June 30, 2013. Monthly rent was \$800.00. The Tenant paid a security deposit in the amount of \$400.00 on January 25, 2013, by Interac e-transfer to the Landlord's bank account.

The Tenant testified that she arrived at the rental unit on February 1, 2013, but the Landlord was not there to meet her. She stated that she could not find the rental unit among the other suites at the Resort. Upon making enquiries, she discovered that the rental unit was not where it was advertised to be and was not a part of the Resort. She stated that when she finally located it, she found it to be very dirty, smelled heavily of tobacco smoke and there was blood on the mattress. The Tenant testified that she immediately notified the Landlord that she would not be moving in and requested return of her security deposit. The Tenant provided her forwarding address on February 8, 2013, via e-mail.

The Landlord stated that her son was going to meet the Tenant on February 1, 2013, but was not able to. She stated that she offered to have the rental unit professionally cleaned and to buy a new mattress, but the Tenant refused to negotiate. The Landlord stated that she did not return the security deposit because she had not re-rented the unit, so she suffered a loss of revenue.

Analysis

A Landlord does not have authority under the Act to arbitrarily decide whether or not to return a security deposit to a tenant. 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.

In this case, I find that the tenancy ended on February 1, 2013. I find that e-mail is not a sufficient method of providing information "in writing". The Act does not have a provision for service by way of e-mail. However, I find that the Tenant provided her forwarding address in writing when she served the Landlord with the Notice of Hearing documents. The Notice of Hearing documents include a copy of the Tenant's Application for Dispute Resolution, which contains an address for service of documents.

The Landlord has not returned any of the security deposit. I find that the Landlord did not have a right under the Act to retain any of the Tenant's security deposit (for

example, an Order of the Director). The Landlord did not file an Application 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 award against the Landlord in the amount of **\$800.00**.

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.

The Landlord retains the right to file an application for damages under Section 67 of the Act, if she so desires.

Conclusion

I hereby provide 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 13, 2013

Residential Tenancy Branch

