



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHASE INVESTMENTS CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 19, 2013, by the Tenant to obtain a Monetary Order for the return of double their security deposit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant affirmed that the Landlord was served with copies of the application for dispute resolution and Notice of dispute resolution hearing by registered mail on February 27, 2013. Canada Post tracking information was provided in the Tenant's testimony. Based on the submissions of the Tenant I find the Landlord deemed served notice of this proceeding on March 4, 2013, five days after it was mailed, in accordance with section 90 of the Act; and I proceeded in the Landlord's absence.

Issue(s) to be Decided

Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant testified that his month to month tenancy began in approximately September 2012. Rent was payable each month in the amount of \$375.00 and his rent was paid directly to the Landlord from the Ministry of Social Development. A security deposit of \$187.50 was paid.

The Tenant stated that he attended dispute resolution on December 20, 2012, at which time the Landlord and him agreed that they would end the tenancy and he would move out on January 15, 2013. The Landlord had been paid for a full month's rent for January 2013 by the Ministry and before the Tenant could stop the rent payments the Landlord received and cashed the cheque for February 2013 rent.

The Tenant submitted that he met with the Landlord on February 19, 2013, and requested the return of half of January's rent, all of February's rent and the return of his deposit. The Landlord refused to give him the full amount and instead he gave him \$200.00 cash on February 19, 2013.

The Tenant confirmed that he has not yet provided the Landlord with his forwarding address in writing but will do so in the next couple of weeks.

Analysis

Based on the foregoing evidence, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant.

At common law when parties enter into a tenancy agreement the tenant is required to pay rent and the landlord in turn provides a rental unit. In cases where rent is paid in advance of the month, for example rent for August is due on or before the 1st of August, if the tenancy ends by mutual agreement then the landlord would be entitled to retain the rent paid up to the date the contract was in effect and the tenant would be entitled to the return of the rent that was paid for the period after the tenancy ended.

Based on the aforementioned I find the Tenant is entitled to the return of the rent paid in advance for the period of January 16 – 31, 2013. Furthermore, the Landlord cashed and retained the rent payment for February 2013 with no legal right to do so; returning only \$200.00 cash to the Tenant on February 19, 2013. Accordingly, I award the Tenant \$362.50 which is comprised of the following.

January 16 – 31, 2013	\$187.50
February 2013	375.00
LESS: Refund of \$200.00	<u>-200.00</u>
TOTAL due the Tenant	<u>\$362.50</u>

The Tenant applied for the return of double the security deposit; however he has not met the burden of proving that he gave the landlord(s) a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

Therefore in the absence of proof that a forwarding address was given to the Landlord in writing it is my finding that at the time that the Tenant applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this

application is premature. Accordingly, I dismiss the claim for the return of the security deposit, with leave to re-apply.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$362.50**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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 17, 2013

Residential Tenancy Branch

