



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of double the deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on March 21, 2013 to the landlord via registered mail at the address noted on the application.

The tenant completed a Land Title Search at a government of British Columbia office, in order to establish the landlord's address; an address had not been provided at any time during the tenancy. The title search of the rental property showed that the landlord, who signed the tenancy agreement, was the owner of the property. The title search provided the mailing address of the landlord, as the registered owner of the rental property.

The registered mail was eventually returned to the tenant, marked as unclaimed.

These documents are deemed to have been served in accordance with section 89 of the Act, on the 5th day after mailing. I find that the landlord was sufficiently served with notice of the hearing; refusal to claim registered mail does not allow a party to avoid service. The landlord did not attend the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 15, 2011. A copy of a signed tenancy agreement was supplied as evidence. The agreement did not include an address or phone number for the landlord; all communication occurred via email. The agreement

indicated that a deposit of \$3,420.00 was paid; the tenant said she actually paid \$2,280.00 and assumed that ½ of that sum was as a pet deposit. Rent was \$2,280.00 per month.

Condition inspection reports were not completed.

The tenancy was a fixed term agreement.

On August 8, 2012 the tenant sent the landlord an email giving notice to end the tenancy effective September 26, 2012; a copy of this email was supplied as evidence. The tenant agreed to pay a "lease breaking fee" in the sum of \$1,125.00 but later found that the landlord was not entitled to this fee. The tenancy agreement did not include a liquidated damages clause.

On August 8, 2012 the landlord responded to the tenant, acknowledging she was planning on vacating. The tenant has a copy of this email.

On September 26, 2012 the tenant and landlord met at the rental unit and walked through the unit. The landlord gave the tenant \$1,140.00 in cash and did not return the balance of the deposit. The tenant did not sign, agreeing to any deduction from the deposit she had paid.

The tenant located new occupants who moved into the unit on the same day that she vacated; they signed a tenancy agreement with the landlord.

The tenant has requested compensation in the sum of \$2,280.00 as she had received a portion of the deposit from the landlord on September 26, 2013. The tenant stated she wished to receive the amount due to her, in accordance with the Act.

Analysis

Section 38(1) of the Act determines that the landlord must, within fifteen days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there was no dispute related to damages.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as required by the legislation.

The landlord accepted a deposit that could be found to be equivalent to a pet and security deposit, combined; however, the tenancy agreement did not differentiate and indicated that only a "deposit" was paid. When the landlord received the tenant's forwarding address on August 8, 2012 and, when the tenancy ended on September 26, 2012, the landlord then had fifteen days from September 26, 2012 to return all of the deposit.

In the absence of written agreement by the tenant allowing deductions from the deposit, I find that the landlord failed to comply with section 38(1) of the Act and that, pursuant to section 38(6) of the Act the landlord must pay the tenant double the deposit (\$4,560.00); less the sum returned to her on September 6, 2012 (\$1,140.00.) This amount exceeds the sum indicated on the tenant's application, but is the amount required by the Act.

Further, the landlord did not include a liquidated damages clause as a term of the tenancy agreement. Even if the agreement had included such a clause the landlord would not be entitled to arbitrarily retain any portion of the deposit held in trust. The only time a tenant can agree to deductions from the deposit is at the end of the tenancy, and agreement must be provided in writing.

I find that the tenant's application has merit and that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of \$3,470.00 (\$4,560.00 less \$1,140.00 plus \$50.00.) In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The tenant is entitled to return of double the deposit paid, less the sum previously returned to her. A monetary order has been issued to the tenant.

The tenant is entitled to filing fee costs.

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: June 13, 2013

