



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 22, 2013, by the Tenant to obtain a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: a Canada Post receipt; tenancy agreement; and their written statement.

The Landlord submitted documentary evidence which included, among other things, copies of: their written submission; the cashed cheque issued to the Tenant for partial refund of security deposit; the tenancy agreement; invoices for repairs; a cheque issued for repairs; photos of the rental unit; a letter issued by the Tenants providing their forwarding address; and a photocopy of an envelope.

The parties confirmed they entered into a written month to month tenancy that began on May 1, 2011 which ended January 31, 2013. Rent was payable on the first of each month in the amount of \$950.00 and on April 26, 2011 the Tenant paid \$475.00 as the security deposit. Although the parties did a walkthrough of the unit at the beginning and at the end of the tenancy there was no evidence to support that condition inspection report forms were signed and provided to the Tenant.

The Tenant submitted that he mailed his forwarding address to the Landlord by mail and provided a receipt dated February 23, 2013. He confirmed receiving and chasing a partial refund of his deposit in the amount of \$175.00 and is seeking the returned of double the balance owed.

The Landlord confirmed that he does not have the Tenant's written permission to authorize him to keep some of the deposit; he does not have an Order authorizing him to keep the deposit; and he has not made an application for dispute resolution. He stated that he only recently found out that he was required to make an application or get the Tenant's written approval to withhold money for damages.

The Landlord pointed to his evidence of the envelope he received the Tenant's forwarding address in and noted that it is post marked February 26, 2013. He could not recall the date he received this letter.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7

In this case I find the Landlord received the forwarding address on March 2, 2013, five days after it was mailed, in accordance with section 90 of the *Act*. The tenancy ended January 31, 2013, and the Landlord returned \$175.00 of the security deposit keeping the balance of \$300.00.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than March 17, 2013.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find the Tenant has met the burden of proof and I award them double their deposit, plus interest, as follows:

Double Security Deposit (2 x \$475.00)	\$950.00
Interest on deposit of \$0.00	0.00
LESS: Partial payment received	<u>-175.00</u>
AMOUNT DUE TO TENANT	<u>\$775.00</u>

The Tenant has succeeded with his application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$825.00** (\$775.00 + \$50.00). 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: June 14, 2013

Residential Tenancy Branch

