



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit, doubled, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order, which includes their security deposit, and to recover the filing fee?

Background and Evidence

The parties agree this tenancy began on July 31, 2012, ended on or about November 29, 2012, monthly rent was \$900, and the tenants paid a security deposit of \$450 on July 31, 2013.

The tenant stated that she provided the landlord with her written forwarding address in letter form and dropped it off in the landlord's mail slot on the day she was moving out, November 29, 2013.

The tenant provided a copy of the letter containing the written forwarding address.

The tenant submitted that the landlord has failed to return her security deposit.

In response to my question the tenant said that she had witnesses to the delivery of the written forwarding address; however no witness attended the hearing.

In response, the landlord denied that he had received the tenants' written forwarding address and was unaware of her new address until he received the tenants' application for dispute resolution. In explanation, the landlord said that he was out of the country for 5 weeks during the time frame of the tenancy ending and that he did not receive the document upon his return.

The landlord submitted that he offered to return the tenants their security deposit when he received the tenants' application, but that she refused.

I note that in the landlord's documentary evidence, he did contend that the tenant is not entitled to her security deposit, which he incorrectly labeled a "damage deposit," as the tenancy agreement he prepared provided for an automatic forfeiture in the event the tenants move out prior to 6 months. The landlord was advised that this term is not enforceable under the Residential Tenancy Act.

The landlord also provided other documentary evidence not relevant to the issue of the tenants' security deposit.

Analysis

Section 38 of the *Act* requires that within 15 days of the end of a tenancy or the date the landlord receives the tenant's written forwarding address, whichever is later, the landlord is required to repay to the tenant the security deposit or file an application claiming against the deposit. In the event a landlord fails to comply with this provision of the *Act*, then the landlord must pay the tenant double the security deposit.

In the case before me, from the evidence provided by the tenant, I cannot conclude that the tenant provided the landlord with her written forwarding address as required under section 38. The tenant said that she put the written forwarding address through the mail slot and had several witnesses; however, there were no written statements or attendances by the witnesses and the landlord denied receiving the forwarding address.

When both the tenant and the landlord submit differing, equally probable version of events, without supporting witness statements or other conclusive evidence, such as a receipt for registered mail had the tenant chosen to serve the landlord in this manner, then the party who bears the burden of proof, the tenants here, cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because I find disputed oral testimony does not sufficiently meet the burden of proof.

I therefore find that the tenants submitted insufficient evidence that they submitted their written forwarding address to the landlord to the landlord within 15 days of the end of the tenancy and I therefore am unable to order that the landlord pay double the amount of the security deposit.

However, I find the tenants are entitled to a return of their security deposit as I find that the landlord had no authority retain the security deposit.

I therefore find the tenants have proven a total monetary claim of \$500, comprised of their security deposit of \$450 and the filing fee of \$50, which I have allowed pursuant to section 72 of the Act.

I grant the tenants a monetary order for \$500 and it is enclosed with the tenants' Decision. This order is a legally binding, final order, and should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants are granted a monetary order in the amount of \$500.

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 20, 2013

Residential Tenancy Branch

