



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit and the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 15, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started in September, 2011 as a fixed term tenancy for 12 months and then renewed on a month to month basis. Rent was \$1,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$750.00 during the start of the tenancy. The Tenant said no move on or move out condition inspection reports were completed. The Landlord confirmed that no condition inspection reports were completed. The Tenant said the tenancy ended on February 28, 2013.

The Tenant said the Landlord only returned \$368.25 of her security deposit on approximately March 28, 2013. The Tenant said she tried to work with the Landlord in regards to the security deposit and the condition of the unit at the end of the tenancy, but they were unsuccessful in making an agreement about the security deposit. The Tenant said she did not agree to the deductions the Landlord took from her security deposit.

As well the Tenant said she cleaned the unit to a similar state as when she moved in to the rental unit. The Tenant said the rental unit was still being worked on when she moved in and the unit was not clean.

The Tenant continued to say that when she did not receive her full security deposit back from the Landlord she applied for arbitration and was told she could apply for double her security deposit in the amount of \$1,500.00. The Tenant said she is holding the Landlord's cheque for \$368.25.

The Landlord said they did not do a move in or move out condition inspection report, but he did try to work with the Tenant to negotiate a deduction from the security deposit for cleaning the unit. The Landlord continued to say the rental unit was left in an unclean state and he incurred expenses of \$600.00 for a cleaning company to clean the unit and dump charges of \$81.75 for hauling away garbage. The Landlord submitted paid receipts for his expenses. The Tenant said some of the garbage was at the rental unit when she moved in. The Landlord said he submitted photographs to support his claim that the rental unit was left in an unclean state. The Landlord said he deducted \$381.75 from the Tenant's security deposit as he thought this was a fair amount to pay the Tenant's share of the cleaning costs. The Landlord said he sent the Tenant a cheque for \$368.25 on March 28, 2013.

Analysis

Sections 24 and 36 say that if a Landlord does not do a move in and move out condition inspection reports then the Landlord's right to claim against the Tenant's security deposit for damages is extinguished.

In this situation the Landlord did not complete the required condition inspection reports and as a result I find the Landlord's right to claim against the Tenant's security deposit is extinguished.

Further:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from that the Tenant did give the Landlord a forwarding address in writing on March 19, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$750.00 in the amount of $\$750.00 \times 2 = \$1,500.00$. The Tenant has a cheque from the Landlord dated March 28, 2013 in the amount of \$368.25 which I order the Tenant to use as partial payment of the Tenant's claim against the Landlord.

As the Tenant was successful in this matter I further order the Tenant to recover the cost of the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 38 and 67 a monetary order for \$1,181.75 will be issued to the Tenant. This Monetary order represents double the security deposit and filing fee less the cheque already issued by the Landlord to the Tenant as partial payment of the security deposit.

	Double the security deposit	\$1,500.00
	Filing fee	\$ 50.00
Less	March 28, 2013 cheque from Landlord	\$ 368.25
	Balance owing to the Tenant	\$1,181.75

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 & 72 of the Act, I grant a Monetary Order for \$1,181.75 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: July 09, 2013

Residential Tenancy Branch