



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Keller Williams Valley Realty Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail on May 29, 2013. The Landlord acknowledged receiving the documents on June 6, 2013. It was also determined that the Landlord mailed the Tenant its documentary evidence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy started on October 1, 2008 and ended on May 2, 2013. The Tenant paid a security deposit in the amount of \$600.00 on October 1, 2008.

The Tenant testified that she provided the Landlord with her forwarding address in writing on May 2, 2013. She stated that she wrote it on the Condition Inspection Report at the end of the tenancy. The Tenant testified that there was no Condition Inspection Report done at the beginning of the tenancy.

The Tenant stated that she phoned the Landlord on May 24, 2013, to enquire about her security deposit refund and was told that the Landlord forgot about it and that she could come and pick it up. The Tenant received \$600.00 from the Landlord on May 28, 2013.

The Landlord BR testified that his assistant was instructed to send the Tenant a refund cheque, but the "ball was dropped". He stated that the Tenant was supposed to move out of the rental unit at the end of April, but did not move out until May 2, 2013.

The Landlord SM stated that the carport at the rental property was still full of the Tenant's possessions on April 30, 2013, and that the Tenant had belongings inside the rental unit.

The Landlord JL stated that the Tenant was evicted for consistently being late paying rent and that she was supposed to move out effective March 31, 2013. The Landlord SM asked that this be taken into consideration. At this point, the parties attempted to come to a settlement agreement, but were unsuccessful.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing (whichever date is the latter), a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit that the Landlord withheld (\$600.00 x 2 = **\$1,200.00**). Interest on the original deposit has accrued in the amount of \$2.26.

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

I hereby provide the Tenant with a Monetary Order, calculated as follows:

Double the security deposit	\$1,200.00
Accrued interest	\$2.26
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$1,252.26
Less amount received on May 28, 2013	<u>-\$600.00</u>
BALANCE DUE TO THE TENANT	\$652.26

The Landlord retains the right to file an application for damages under Section 67 of the Act, if it so desires.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$652.26** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 03, 2013

Residential Tenancy Branch

