



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 he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on June 4, 2013. The service of documents was supported by a signed witness statement. 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 parties 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 on September 1, 2012 as a fixed term tenancy with an expiry date of August 31, 2013. The tenancy ended on May 1, 2013. Rent was \$2,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,100.00 on July 24, 2012.

The Tenant said that he moved out of the rental unit on May 1, 2013 because the rental unit was not zoned for residential occupancy and the municipal bylaws officer told them they had to move out immediately. The Tenant continued to say that he gave the Landlord a forwarding address in writing on May 16, 2013. The Tenant said no move in or move out condition inspection reports were done. The Tenant continued to say that he cleaned the unit before leaving and he asked the Landlord for his security deposit back. The Tenant said he has not received all or part of the security deposit to date.

The Landlord said the Tenants broke a fixed term tenancy agreement by moving out of the unit on May 1, 2013 when the tenancy agreement was to August 31, 2013. As well the Landlord said the Tenants left the unit in very poor condition and there was

substantial damage. The Landlord submitted photographs of the rental unit to support these claims. The Landlord said they did not do move in or move out condition inspection reports as she was unaware these reports had to be done. The Landlord said the rental unit was in pristine condition when the Tenants moved in and the Tenants painted the unit, damaged the unit and did not clean the rental unit when they moved out. The Landlord said she may make an application for unpaid rent and damages to the rental unit.

Analysis

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 accept the Tenant's testimony that he gave the Landlord a forwarding address in writing on May 16, 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 by May 31, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$1,100.00 in the amount of $\$1,100.00 \times 2 = \$2,200.00$.

As the Tenant was successful in this matter he is also entitled to recover the filing fee of \$50.00 from the Landlord; pursuant to section 67 a monetary order for \$2,250.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$2,200.00 and the filing fee of \$50.00.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$2,250.00 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: September 09, 2013

Residential Tenancy Branch

