



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 10, 2013. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absences.

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 February 1, 2013 as a month to month tenancy. The tenancy ended May 31, 2013. Rent was \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid half the rent in the amount of \$400.00 per month as the rental unit was shared with a roommate who also paid \$400.00 per month. The Tenant and the roommate had separate tenancy agreements. The Tenant paid a security deposit of \$400.00 on January 24, 2013 and a deposit for the first month’s rent of \$400.00 and last month’s rent in the amount of \$800.00. The extra rent deposit was paid January 24, 2013.

The Tenant said that she gave written notice on April 30, 2013 that she was moving out of the rental unit on May 31, 2013. The Tenant said she gave the Landlord’s agent her forwarding address in writing on May 3, 2013 the day the Tenant actually moved out. The Tenant said the Landlord kept the rent deposit for the last month of rent of \$800.00 for the May, 2013 rent even though the roommate paid her share of the rent of \$400.00. The Tenant said she included a email from the Landlord confirming the roommate paid \$400.00 in May, 2013. The Tenant said the Landlord said this payment was the roommate’s security deposit, but the Tenant said she paid the full security deposit on January 24, 2013 so this payment from the roommate was for the May, 2013 rent. As a

result the Tenant is requesting double the security deposit as prescribed in the Act and \$400.00 which represents overpayment of rent for May, 2013. The Tenant said her total claim is double the security deposit in the amount of \$800.00 and \$400.00 in overpayment of rent for May 2013 totaling \$1,200.00.

Further the Tenant said the Landlord repaid \$400.00 on August 21, 2013 after she received the Tenant's hearing package. Therefore the Tenant said her claim would be reduced by \$400.00. The Tenant said her claim is \$800.00.

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 she gave the Landlord a forwarding address in writing on May 3, 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 June 15, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$400.00 in the amount of $\$400.00 \times 2 = \800.00 .

Further I accept the Tenant's testimony that the Landlord owed her \$400.00 in overpayment of rent for May, 2013 and that the Landlord has paid that amount to the Tenant on August 21, 2013.

As the Tenant was successful in this matter; pursuant to section 38 & 67 a monetary order for \$800.00 has been issued to the Tenant. This Monetary order represents double the security deposit of \$400.00 in the amount of \$800.00.

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 \$800.00 to the Tenant. The order must be served on the Respondents 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: October 09, 2013

Residential Tenancy Branch

