



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

The tenant and her agent attended the telephone conference call hearing; the landlord did not attend.

The tenant testified that she served the landlord with her Application for Dispute Resolution and Notice of Hearing by registered mail on October 11, 2013. The tenant supplied the registered mail receipt showing the tracking number of the mail.

Based upon the submissions of the tenant, I find the landlord was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant and her agent 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 evidence and testimony before me that met the requirements of the Dispute Resolution 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

Is the tenant entitled to a monetary order, which includes her security deposit, and to recover the filing fee?

Background and Evidence

The tenant provided documentary evidence by way of a leasing contract that this fixed term, sub tenancy began on May 3, 2013, ended on August 27, 2013, monthly rent was

\$630, and a security deposit of \$315 was paid by the tenant at the beginning of the tenancy.

The tenant's agent submitted that the parties agreed that in the last month of the tenancy the tenant would pay rent of \$500 and the landlord could deduct the remaining amount of \$130 from the tenant's security deposit. The tenant submitted that the landlord should have returned the amount of \$185 to her.

The tenant gave evidence that the landlord was provided the tenant's written forwarding address on September 18, 2013 via regular mail. The tenant provided a copy of the letter.

Section 90 of the Act states that documents served by registered mail are deemed delivered five days later. Thus the landlord was deemed to have received the tenant's written forwarding address on September 23, 2013.

The tenant stated that the landlord has not returned her security deposit and is seeking monetary compensation of \$550. In explanation of this amount the tenant submitted that this is her security deposit of \$315, doubled to \$630, less the \$130 left owed by the tenant for the month of August, plus the filing fee of \$50.

The tenant's additional relevant documentary evidence included a copy of the envelope used by the tenant to send her written forwarding address, showing the landlord's address, and copies of text messages between the parties.

I have no evidence before me that the landlord has filed an application for dispute resolution claiming against the security deposit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Pursuant to Residential Tenancy Branch Policy Guideline #19, a sublease is a lease given by a tenant of the residential premises to a third party, the sub-tenant, conveying substantially the same interest in the land as held by the original lessee, the landlord in this case.

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of her security deposit in this case has been extinguished.

In the case before me, the undisputed evidence shows that the tenancy ended on August 27, 2013, and that the landlord received the tenant's written forwarding address at least by September 23, 2013, the landlord has not applied for dispute resolution claiming against the security deposit, and has not returned any portion of the tenant's security deposit. I therefore find the landlord was required to return the amount of \$185 to the tenant by October 8, 2013, which was her security deposit of \$315, less the amount of \$130 the tenant agreed the landlord could retain, and that she failed to do so.

I find that the tenant is entitled to monetary award in the amount of \$420, comprised of the remainder of her security deposit of \$185, doubled to \$370, and for recovery of the filing fee of \$50 due to the tenant's successful application, and is therefore entitled to a monetary order in that amount.

Conclusion

The tenant's application has been granted.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$420, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the 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 subject to recovery from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: December 02, 2013

Residential Tenancy Branch

