



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This matter dealt with an application by the Tenant for the return of the security deposit and other considerations.

The Tenant said she had her agent serve the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on August 28, 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 the security deposit?

Background and Evidence

This tenancy was to start on June 1, 2013 as a fixed term tenancy for 6 months. The Tenant did not move into the rental unit. Rent was to be \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on May 1, 2013. The Tenant said she gave the Landlord her forwarding address in writing on June 22, 2013

The Tenant said when she inspected the rental unit prior to moving in there were health and safety issues that made her change her mind about moving into the rental unit. The Tenant said the unit was very dirty there were bare electrical wires and the Landlord said a new washer and dryer would be included in the rental and the appliances were not included in the rental unit. As a result the Tenant told the Landlord on May 25, 2013 that she was not moving into the rental unit and she wanted her security deposit returned. The Tenant said she had a difficult time communication with the Landlord and the Landlord’s Agent (her son) and as a result she did not receive a copy of the tenancy agreement and the Landlord did not return her security deposit.

The Landlord said the Tenant looked at the rental unit when the previous tenants were still living there, so the Landlord said he did not have an opportunity to clean and prepare the unit for this tenancy prior to May 25, 2013. The Landlord continued to say he would have returned the Tenant's security deposit if he could have rented the unit out for June 1, 2013. The Landlord said that he rented the unit out for July 1, 2013 and he kept the Tenant's security deposit of \$600.00 as payment for the lost rental income he had for June, 2013. The Landlord said he did not make an application to retain the Tenant's security deposit or for unpaid rent under the fixed term tenancy agreement. The Landlord said he understands that he can make an application up to two years after the tenancy ends.

The Tenant said in closing that she just wants her security deposit back because she believes the rental unit had health and safety issues that made it unsafe to live in.

The Landlord said in closing that the Tenant changed her mind about the tenancy and he had done what was required on him. The Landlord said he hired cleaning staff to clean the unit on May 25, 2013 as he could not get into the unit earlier because of the previous tenancy. As well the Landlord said the Tenant owes rent for the month of June, 2013 in the amount of \$1,200.00.

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 find that the Tenant did give the Landlord a forwarding address in writing on June 22, 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 \$600.00 in the amount of $\$600.00 \times 2 = \$1,200.00$.

In addition Section 16 of the Act says the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into whether or not the tenant ever occupies the rental unit.

And section 44 (2)(a) says a tenant may end a fixed term tenancy by giving the Landlord written notice not earlier than one month after the landlord receives that notice and it is not earlier than the date specified in the tenancy agreement unless agreed to by the landlord and is based on the day of the month the rent is normally paid.

Consequently the Tenant may be responsible for the rent for the month of June, 2013 in the amount of \$1,200.00. The Landlord is at leave to apply for unpaid rent within a 2 year period after the tenancy ended.

As the Tenant has been successful in this matter I award a monetary order for \$1,200.00 to the Tenant.

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 \$1,200.00 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: December 04, 2013

Residential Tenancy Branch

