



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 21, 2013, by the Tenant to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant's testimony was undisputed by the Landlord. She stated that they entered into a verbal tenancy agreement that began on February 1, 2012, and ended August 1, 2013. Rent was payable on the first of each month in the amount of \$850.00, which she paid in installments on the first and fifteenth of each month. Rent as paid to the Landlord's relative who resided in the basement suite. On February 1, 2012 the Tenant paid \$425.00 as the security deposit. She provided her forwarding address to the

Landlord and in writing to his Agent who resided in the basement suite. She is requesting the return of double her deposit.

The Landlord testified that it is his aunt who resides in the basement and who acted on his behalf. He confirmed that he has not returned the security deposit; he does not have the Tenant's written permission to keep it; he does not have an Order issued by the *Residential Tenancy Branch* granting him authority to keep the deposit; and he has not made application for dispute resolution to keep the deposit.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended August 1, 2013 and that the Tenant provided the Landlords with her forwarding address in writing on or before August 1, 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than August 16, 2013. They did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double the security deposit plus interest in the amount of **\$850.00** (2 x \$425.00 + \$0.00 interest).

The Tenant has succeeded with her application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$900.00** (\$850.00 + \$50.00). This Order is legally binding and must be served upon the Landlord(s). In the event that the Landlord(s) do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: December 02, 2013

Residential Tenancy Branch

