



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for the return of all or part of the security deposit, and to recover the filing fee.

The tenant, the landlord, and a agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that the landlord's evidence was received prior to the hearing and that the tenant had the opportunity to review the landlord's evidence prior to the hearing. The tenant's evidence was excluded from the hearing as it was served late to the Residential Tenancy Branch and, therefore, not in accordance with the Rules of Procedure.

Issue to be Decided

- Is the tenant entitled to the return of all or part of the security deposit under the *Act*?

Background and Evidence

The parties agreed that a one year fixed term tenancy agreement began on May 1, 2010 and ended on August 31, 2011, and that a second one year fixed term tenancy agreement was entered into at that time and ended on August 31, 2012. Monthly rent in the amount of \$2,000.00 was due on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant at the start of the tenancy. Both parties confirmed that an incoming and outgoing condition inspection report was completed.

The tenant testified that the written forwarding address was mailed to the landlord on September 12, 2012 by regular mail. The landlord confirmed that he received the tenant's written forwarding address on September 17, 2012. The parties agreed that the tenant did not sign over any portion of the tenant's security deposit. The tenant stated that he received a cheque from the landlord that was post-marked on September 21, 2012, however, the landlord placed a "stop payment" on the cheque, which the landlord confirmed, resulting in the tenant not being able to cash that cheque. The landlord stated that he placed a "stop payment" on the first cheque due to the carpet needing to be cleaned again.

In October of 2012 the landlord mailed a second cheque. The second cheque was in the amount of \$920.00, which the tenant cashed. The tenant stated that he received the second cheque on either October 13, 2012 or October 14, 2012. The landlord confirmed that he did not apply to claim towards the tenant's security deposit under the *Act*, and did not have permission in writing from the tenant to keep any portion of the tenant's security deposit. The tenant is seeking the return of double the security deposit under the *Act*, plus the \$50.00 filing fee.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

There is no dispute that the landlord placed a "stop payment" on the first cheque issued to the tenant and that the tenant received a second cheque on either October 13, 2012 or October 14, 2012. The tenant deposited the second cheque from the landlord in the amount of \$920.00. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) 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.**

(6) **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.**

[emphasis added]

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenant. In the matter before me, the landlord had received the written forwarding address on September 17, 2012 and did not have any authority under the *Act* to keep any portion of the security deposit.

Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on September 17, 2012. Therefore, **I find** the tenant is entitled to the return of double the original security deposit of \$1,000.00 for a total of \$2,000.00, less the \$920.00 which the landlord paid to the tenant in October of 2012, for a net balance owing by the landlord to the tenant in the amount of **\$1,080.00**.

The landlord should have either not placed a “stop payment” on the original cheque mailed to the tenant, or held the deposit and claimed towards the tenant’s security deposit under the *Act* within 15 days of receiving the tenant’s written forwarding address on September 17, 2012. The landlord failed to claim towards the tenant’s security deposit and did place a “stop payment” on the first cheque issued.

As the tenant’s claim had merit, **I grant** the tenant the recovery their filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$1,130.00** comprised of \$2,000.00 for double the original security deposit, plus the \$50.00 filing fee, less the \$920.00 already paid by the landlord on October 13th or 14th of 2012. **I grant** the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$1,130.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's claim had merit. The landlord has breached section 38 of the *Act*.

The tenant has been granted a monetary order under section 67 in the amount of \$1,130.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 18, 2013

Residential Tenancy Branch

