



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Salco Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail, on September 05, 2013. The Tenant submitted Canada Post documentation that corroborates this testimony. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Tenant stated that he moved into this rental unit on July 01, 2012; that when he moved into the rental unit there was already another male living in the rental unit; that when he moved into the rental unit the Landlord wanted the Tenant to sign a tenancy agreement; that he did sign a tenancy agreement in which he agreed to pay monthly rent of \$425.00 by the first day of each month; that he was never given a copy of the tenancy agreement; that he does not know if the male he was living with is named on the tenancy agreement he signed; that he does not know if the tenancy agreement specified that rent was \$850.00 per month or \$425.00 per month; that he paid a security deposit of \$212.50 to an agent for the Landlord on June 05, 2012; that when the tenancy began he paid his rent directly to an Agent for the Landlord and the male he was living with also paid \$425.00 in rent directly to the Agent for the Landlord; that when there was a change in managers the Landlord asked that the rent be paid by cheque; that the male he was living with did not have a chequing account so he paid the rent on behalf of the other male and then collected the rent from the other male; that on, or about, May 30, 2013 he gave the Landlord written notice of his intent to vacate the

rental unit by the end of June of 2013; that he vacated the rental unit on June 29, 2013; that the male he was living with continued to live in the rental unit after June 29, 2013; that on June 27, 2013 or June 28, 2013 he left his forwarding address in the Landlord's mail box; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant submitted several receipts in support of this claim.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord. In the absence of the tenancy agreement, it is difficult to determine whether the Tenant and the male he lived with were co-tenants or whether they each had their own tenancy agreement. In these circumstances I find, on the balance of probabilities, that the parties were co-tenants.

In reaching the conclusion that the parties were co-tenants I was influenced, in part, by the fact the Tenant assumed responsibility for paying the Tenant \$850.00 by cheque when the Landlord asked to have the rent paid by cheque. In my view this is an indication that the Tenant understood the parties were jointly responsible for paying the rent.

In reaching the conclusion that the parties were co-tenants I was also influenced by the receipts that, on many occasions, rent for the entire unit was paid at one time. In my view this is an indication that there was a single tenancy.

In reaching the conclusion that the parties were co-tenants I was also influenced by the receipt, dated June 05, 2012, which has a notation that indicates the receipt is for half of the security deposit. This causes me to conclude that the security deposit due for the tenancy was actually \$425.00 and that the Tenant was jointly responsible for that payment. In the event the Tenant had his own tenancy agreement for which he was only required to pay a security deposit of \$212.50, I would expect this receipt would have indicated that his deposit was paid in full.

On the basis of the undisputed evidence, I find that on, or about, May 30, 2013 the Tenant gave the Landlord written notice of his intent to vacate the rental unit by the end of June of 2013 and that he did vacate the rental unit on June 29, 2013. As I have determined that this was a joint tenancy, I find that this written notice served to end the tenancy of the Tenant and his co-tenant, pursuant to section 44(1)(a) of the Act.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not yet repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that he paid, which is \$425.00.

Although the Tenant submitted a receipt to show that \$262.50 was paid on July 21, 2012 for "hydro payment, security deposit", this receipt was not discussed at the hearing. As this receipt was not discussed at the hearing, I find that I have insufficient evidence to determine how much more was paid for a security deposit for this tenancy or if any portion of this payment has been returned to the co-tenant or lawfully retained by the Landlord. I have therefore not considered any security deposit payment other than the \$212.50 that was paid on June 05, 2013. The Tenant retains the right to file another Application for Dispute Resolution if issues relating to the remainder of the security deposit remain outstanding.

Conclusion

The Tenant has established a monetary claim of \$425.00, which is comprised of double the security deposit, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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 11, 2013

Residential Tenancy Branch

