



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 24, 2013, by the Tenant to obtain a Monetary Order for the return of double her security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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 parties did not dispute that they entered into a tenancy that began on December 1, 2009 and ended October 1, 2013. Rent was initially payable on the first of each month in the amount of \$1,000.00 and was subsequently increased to \$1,095.00 per month. On or before December 1, 2009, the Tenant paid \$500.00 as the security deposit.

The Tenant testified that she filled out a tenancy agreement document and had the Landlord sign it so she could qualify for a rent subsidy. She did not provide a copy of that agreement in evidence because it is currently in storage. She stated that no condition inspection report forms were completed at move in or move-out.

The Landlord testified that the Tenant had moved out her washer and dryer before midnight on October 1, 2013 and that she returned the keys to him on October 2, 2013. He stated that they did a walk through at move-in and move-out; however, he did not record anything on a condition inspection form. He said he recalls receiving the Tenant's forwarding address on October 1, 2013, the day he did the walk through.

The Landlord stated that he has returned a portion of the Tenant's deposit in the amount of \$350.75 and he acknowledged that it was returned a little late but that was because he was waiting for the carpet people. He said he mailed the cheque on October 10, 2013, but he had dated it for October 15, 2013. He has not made application to keep the deposit and he does not have the Tenant's permission, in writing, to keep any portion of the deposit. He said he thought they had an understanding that he would keep the money for the repairs that were obvious.

The Tenant argued that her forward address was provided to the Landlord on September 18, 2013, when she provided the Landlord her 10 day notice to end her tenancy. She said she received the \$350.75 cheque in the mail on October 18, 2013 but she has not cashed that cheque as she thought she had to wait for this proceeding.

In closing, the Landlord confirmed he received the forwarding address on September 18, 2013 and stated that he did not put a stop payment on the October 15, 2013 cheque.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, in the absence of evidence of a written tenancy agreement I find that the undisputed terms of this tenancy are recognized and enforceable under the *Residential Tenancy Act*.

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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

When a landlord fails to properly complete a condition inspection report, the landlord's right to claim against the security deposit for damage to the property is extinguished, as stipulated in sections 24 and 36 of the *Act*.

Therefore, as the Landlord in this case did not complete condition inspection reports at move-in or move-out, he lost his right to claim an amount from the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing, pursuant to section 38(1) of the *Act*.

In this case the evidence supports the tenancy ended October 1, 2013, and the Tenant provided her forwarding address in writing on September 18, 2013. Accordingly, the Landlord was required to return the **full** \$500.00 security deposit to the Tenant, no later than October 16, 2013. The Landlord returned only a portion of the deposit (\$350.75) by mail which the Tenant states was not received until October 18, 2013.

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 deposit and the landlord must pay the tenant double the security deposit.

Accordingly, I find that the Tenant has met the burden of proof and I approve her claim for the return of double her deposit plus interest in the amount of **\$1,000.00** (2 x \$500.00 + \$0.00).

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,000.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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.

The Tenant is at liberty to cash the \$350.75 cheque dated October 15, 2013 and deduct this amount from the monetary award listed above. In the event that this cheque does

not clear the bank then the Tenant will be at liberty to enforce the full amount of the Monetary Order.

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: January 28, 2014

Residential Tenancy Branch

