



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 17, 2013 by the Tenant to obtain a Monetary Order for the return of double their security deposit.

The Tenant submitted documentary evidence which indicates the Landlord was served with copies of the Tenant's application for dispute resolution and Notice of dispute resolution hearing, on October 22, 2013, by registered mail. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on October 27, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Landlord's absence.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant submitted evidence that he entered into a verbal tenancy agreement with the Landlord for a tenancy that began on May 1, 2013. Rent was payable on the first of each month and on May 1, 2013 the Tenant paid \$235.00 as the security deposit.

The Tenant testified that on July 30, 2013, he served the Landlord written notice to end tenancy effective August 31, 2013. This notice to end tenancy included his forwarding address. He vacated the property in mid July 2013 however he paid for the unit until the end of August 31, 2013. He was never contact or given an opportunity to attend a move out inspection. The Landlord has refused to return his deposit, which he is now seeking return at double the amount.

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, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by their documentary evidence.

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 31, 2013, and that the Tenant provided the Landlord with his forwarding address in writing on July 30, 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 September 15, 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 his claim and I award him double his security deposit plus interest in the amount of **\$470.00** (2 x \$235.00 + \$0.00 interest).

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$470.00**. 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.

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 15, 2014

Residential Tenancy Branch

