



Dispute Resolution Services

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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 October 8, 2013, by the Tenant to obtain a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlord for this application.

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 undisputed facts were confirmed during this proceeding as follows: the parties entered into a verbal month to month tenancy that began on February 1, 2013. They agreed the Tenant would pay a reduced rent to hold the suite until he would occupy it on March 1, 2013. Rent was payable on the first of each month in the amount of \$850.00 and on or before March 1, 2013 the Tenant paid \$425.00 as the security deposit. No move in or move out condition inspections were completed. Sometime in mid July 2013, the Landlord received notice that the Tenant would be ending the tenancy by August 31, 2013. The Landlord received the Tenant's forwarding address in writing on approximately September 13, 2013.

The Landlord testified and confirmed that she has not returned the Tenant's security deposit and that she retained it to cover her losses. She stated that she did not have the Tenant's written permission to keep the deposit; she did not have an order issued by the *Residential Tenancy Branch* authorizing her to keep the deposit; and she has not made application for dispute resolution to keep the deposit.

In closing, the Tenant offered to settle this matter for the return of the single amount of his deposit plus the filing fee. When the Landlord refused to settle this matter the Tenant stated he wished to proceed with his application for double the deposit.

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*.

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.

In this case the tenancy ended August 31, 2013 and the Tenant provided the Landlord with his forwarding address on September 13, 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.

As per the foregoing, I find the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than September 28, 2013. She did neither. Therefore, I find that the Landlords have failed to comply with Section 38(1) of the Act and that the Landlords are 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.

The Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of double his security deposit plus interest in the amount of **\$850.00** (2 x \$425.00 + \$0.00 interest).

The Tenant has succeeded with his 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. 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 03, 2014

Residential Tenancy Branch

