



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 24, 2013, by the Tenant to obtain a Monetary Order for the return of double 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 Tenant, and gave affirmed testimony. The Tenant had not received the Landlord's evidence at the time of this proceeding. That being said, the Landlord's evidence was pertaining to losses the Landlord had suffered and was not pertinent to the matter before me. Therefore, I did not consider the Landlord's evidence. I did however consider the Landlord's 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 pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony provided that the parties entered into a written month to month tenancy agreement that began on May 1, 2012, for rental of the self contained

basement suite. Rent was payable on the first of each month in the amount of \$650.00 and on May 1, 2012 the Tenant paid \$325.00 as the security deposit. The tenancy ended on September 30, 2013, after the Tenant served the Landlord with her written notice to end tenancy. The parties conducted a move-in inspection and signed the condition inspection report form on May 1, 2012. No move-out condition inspection was completed.

The Tenant testified that despite her requests the Landlord did not schedule a move out inspection. She was instructed by the Landlord to leave the key in a secured place when she left; after which the Landlord confirmed that she had picked up the key. She provided the Landlord with her forwarding address on October 1, 2013, in an e-mail. She argued that e-mail was the normal form of communication between her and the Landlord and that she regularly paid her rent through e-mail transfers.

The Tenant submitted evidence that she received \$225.00 on October 3, 2013 as a partial refund of her \$325.00 security deposit. She noted that she had previously agreed to allow the Landlord to keep \$25.00 of her deposit for a locksmith charge and was therefore expecting to receive the full \$300.00 deposit. She confirmed that she was seeking the return of double her deposit.

The Landlord testified and confirmed that she did not arrange to conduct a move out inspection and argued that she was out of town at the time the Tenant moved out. She confirmed that she had received prior notice from the Tenant to end the tenancy and she did not arrange to have an agent conduct the move out inspection during her absence.

The Landlord stated that she withheld \$100.00 from the Tenant's security deposit. She acknowledged that she only had permission to keep \$25.00 of the deposit for previous locksmith charges. She has not filed an application for dispute resolution and does not have the Tenant's written permission to keep the remaining \$75.00 from the deposit.

Analysis

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.

Section 71 (2) (c) The Director may make any of the following orders: That a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

Upon reviewing the foregoing and the evidence before me I find the parties established that e-mails were an acceptable form of written communication between the parties. Accordingly, I find the Landlord was sufficiently served with the Tenant's forwarding address in a written e-mail on October 1, 2013, the date it was sent by the Tenant, pursuant to section 71(2)(c) of the *Act*. I make this finding in part because the Landlord responded to the e-mail when she sent the partial security deposit to the forwarding address provided in the Tenant's e-mail.

The evidence supports the tenancy ended September 30, 2013, and that the Tenant provided the Landlord with her forwarding address on October 1, 2013.

Section 36 of the *Act* provides that 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. Therefore the Landlord was required to return the full amount of \$300.00 (\$325.00 - \$25.00 for locksmith).

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 \$300.00 security deposit in full or file for dispute resolution no later than October 16, 2013. The Landlord returned only a portion of the deposit and did not file for dispute resolution.

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 her claim and I award her double the \$300.00 security deposit plus interest in the amount of **\$600.00** (2 x \$300.00 + \$0.00 interest).

The Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double the Security Deposit & Interest (2 x \$300.00)	\$600.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$650.00
LESS: Payment received October 3, 2013	<u>-225.00</u>
Offset amount due to the Tenant	<u>\$425.00</u>

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$425.00**. 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: February 04, 2014

Residential Tenancy Branch

