



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Deep Cove Marina Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit.

The tenant and landlord's agent attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant did not provide a full name on his application for the landlord's agent. The parties did not raise any objections to the error being corrected and this has now been amended and the landlord's agent's full name has been included on the tenant's application.

The landlords agent testifies that she did not receive a copy of the tenants application. The landlords agent sought to continue with the hearing today and the information on the tenants application was orally provided to the landlord.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on August 07, 2011. The tenancy ended on April 30, 2012. Rent for this unit was \$750.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$375.00 on August 07, 2011.

The tenant testifies that the landlord has failed to return the security deposit within 15 days of receiving the tenants forwarding address in writing. The tenant testifies that the forwarding address was first provided to the landlord in writing on April 30, 2012. The tenant testifies that he left his forwarding address on a note to the landlord with a case of beer and the keys to the unit. The tenant chased the landlord up for the security deposit by e-mail several times and also provided a new forwarding address by email at the landlords request on August 20, 2012. The tenant testifies that he had always dealt with a different agent of the landlord BF. The tenant testifies that he had never met this agent JT and was only notified that this agent was also a landlord in November, 2013.

The tenant testifies that the landlord had still not returned the security deposit by November 2013. The tenant emailed this agent JT to find out what was happening. JT emailed the tenant back and informed the tenant that the landlords would only return half of the security deposit because the tenant did not organise the move out inspection. The tenant responded and notified the landlord that this was their responsibility to do and that no move in inspection had been completed. The tenant declined the landlords offer to settle for half the security deposit and then filed an application for the return of the security deposit.

The landlord's agent testifies that the tenant did not leave a note, keys or a case of beer at the unit on April 30, 2012. The landlord agrees that they later received a forwarding address by email from the tenant and responded to that email. The landlord testifies that the tenant did not do the move out condition inspection and therefore the tenant should not be entitled to receive his security deposit back.

Upon questioning, the landlord's agent testifies that no inspection was done with the tenant at the start of the tenancy and the tenant has equal responsibility to organise the inspections.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. The landlord must arrange the inspection with the tenant on the last day of the tenancy or on another mutually agreed day before new tenants move into the rental unit. In failing to complete the condition inspections when the tenant moved in and out of the unit, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(a) of the *Act* says that the landlord's right to file a claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing. I have no evidence before me that the tenant did provide a forwarding address in writing on April 30, 2012 and as the landlord's agent JT has contradicted the tenant's testimony in this matter, it is one person's word against that of the other and therefore the burden of proof is not met. However, there is sufficient evidence before me that the landlord's agent BF did request the tenants forwarding address again which the tenant duly sent on August 20, 2012.

As a result, the landlord had until September 04, 2012 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of the security deposit. As the Act allows for this amount to be doubled I have issued a Monetary Order to the tenant for an amount of **\$750.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$750.00**. The order must be served on the Respondent and is enforceable through the Provincial Court 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 19, 2014

Residential Tenancy Branch

