



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 7, 2014. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on December 5, 2012 and was renewed for a fixed term from January 1, 2013 to January 1, 2014. The tenancy ended December 1, 2013 when the Tenant gave her notice and moved out of the unit. Rent was \$588.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$294.00 in advance of the tenancy.

The Tenant said that she moved out of the rental unit on December 5, 2013 and gave the Landlord a forwarding address in writing on December 17, 2013. The Tenant said there was a move in condition inspection done, but no move out condition inspection report was completed. The Tenant continued to say that she cleaned the unit before leaving and she asked the Landlord for her security deposit back. The Tenant continued to say the Landlord did send her a cheque for \$122.00 as partial payment of the security deposit, but she did not cash it as she did not agree to the Landlord keeping any part of her security deposit. The Tenant said she has applied for the return of her full security deposit of \$294.00 and the filing fee of \$50.00.

The Landlords said the Tenant has unpaid rent and there were damages to the unit so they deducted these costs and returned \$122.17 to the Tenant. As well the Landlord said they gave the Tenant two opportunities to do a move out condition inspection and the Tenant refused to participate. The Landlord said they did a move out condition report but did not send it to the Tenant. Instead the Landlord sent the Tenant an end of tenancy letter which showed the deductions from her security deposit and the cheque for \$122.17 which represented the net security deposit returned.

The Landlord said the Tenant owes rent and there were damages which they may apply for in the future.

Both parties were made aware that the Act indicates that if a security deposit is not handled correctly at the end of the tenancy then the tenant may be entitled to double the security deposit.

The Tenant requested double the security deposit.

The Landlord said they understood the situation.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on December 17, 2013. The Landlord did not repay the full security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by January 2, 2014. Consequently I find for the Tenant and grant an order for double the security deposit of \$294.00 in the amount of $\$294.00 \times 2 = \588.00 .

As the Tenant was successful in this matter I also order the Tenant to recover the filing fee of \$50.00 from the Landlords. Pursuant to section 67 a monetary order for \$638.00 has been issued to the Tenant.

Further the Tenant is ordered to return the Landlords cheque for \$122.17 forthwith.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$638.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims 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: April 29, 2014

Residential Tenancy Branch

