



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking an order for the return of the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?

Background and Evidence

The tenancy began on July 1, 2012. The rent was \$1,100.00 per month. A security deposit of \$550.00 and pet damage deposit of \$250.00 were paid. Copies of communications and a copy of the tenancy agreement were in evidence. The tenancy ended on July 1, 2013.

The tenant testified that she provided the landlord with her written forwarding address in November 2013. A copy of this communication is in evidence. The tenant testified that the landlord failed to return the deposit within 15 days after the tenancy ended and the written forwarding address given.

The landlord disputed the tenant's testimony and stated that the forwarding address was not received by the landlord until January 2014. The landlord acknowledged that the landlord had not returned the tenant's security deposit and pet damage deposit, nor

had the landlord made an application for dispute resolution seeking to keep the deposits for damage to the suite.

The landlord testified that she was not familiar with the section of the Act requiring the landlord to return the security deposit and pet damage deposit or make an application for dispute resolution to keep the deposits within 15 days of receiving the tenant's forwarding address.

The landlord pointed out that the tenant left the rental unit in a damaged condition when the tenant vacated.

Analysis

Section 38 of the Act provides that a security deposit or pet damage deposit must be refunded to the tenant within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

In the alternative, if the landlord wants to retain the deposit to satisfy a debt or damages, according to the Act, the landlord is required to make a claim against a security deposit by filing an application for Dispute Resolution within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

I accept the testimony and evidence verifying that the written forwarding address was received by the landlord in January 2014. I find that the security deposit was not returned within the 15-day deadline under the Act.

Based on the evidence and the testimony, I find that at the end of the tenancy the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently make an application seeking an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the matter before me, I find that under section 38, this tenant is entitled to be paid double the portion of the security deposit of \$550.00 that was wrongfully retained by the landlord for a refund of \$1,100.00 and double the \$250.00 pet damage deposit for a refund of \$500.00, totalling \$1,600.00, plus the \$50.00 cost of filing the dispute resolution application.

I hereby issue a monetary order for \$1,650.00 in favour of the tenant. This order must be served on the Respondent and may be filed in the BC Provincial Court (Small Claims) and enforced as an order of that Court if not paid.

In regard to the landlord's testimony that the tenant left the unit in a damaged condition, I am not able to hear nor consider the landlord's monetary claims as this hearing has been convened on the tenant's application only. The landlord is at liberty to make their own application for Dispute Resolution with respect to their monetary claims.

Conclusion

The tenant is successful in her application and is awarded a monetary order for a refund of double the security deposit.

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: May 01, 2014

Residential Tenancy Branch

