



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Onni Taylor Way Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit.

The Agent for the Tenant stated that he thinks the Application for Dispute Resolution and Notice of Hearing were served to the Landlord on February 11, 2014, although he cannot recall how those documents were served. The Agent for the Landlord stated that he thinks the Application for Dispute Resolution and Notice of Hearing were received in February of 2014, although he cannot recall how those documents were served.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

On May 12, 2014 the Landlord submitted documents to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were served to the Tenant, via mail, on May 10, 2014. The Agent for the Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

On May 16, 2014 the Tenant submitted documents to the Residential Tenancy Branch. The Agent for the Tenant stated that these documents were served to the Landlord, via email, on May 16, 2014. The Agent for the Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided:

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

Background and Evidence:

The Agent for the Tenant stated that the Tenant moved into the rental unit on February 01, 2010. The Agent for the Landlord stated that he does not know when the Tenant moved into the rental unit, as the Landlord purchased the property after the Tenant was occupying the rental unit. The Agent for the Landlord stated that he does not know when the current Landlord purchased this property.

The Agent for the Tenant stated that the Tenant entered into a written tenancy agreement with the original landlord, a copy of which was submitted as evidence. This tenancy agreement indicates that the Tenant entered into a fixed term tenancy agreement with this landlord, the fixed term of which ended on January 31, 2011. The tenancy agreement indicated that the tenancy will continue on a month-to-month basis at the end of the fixed term; that rent of \$2,100.00 was due by the first day of each month; and that the Tenant was required to pay a security deposit of \$1,050.00 by January 27, 2010.

The Agent for the Tenant stated that the Tenant paid a security deposit of \$1,050.00 to the original landlord on January 27, 2010. The Agent for the Landlord stated that this security deposit was not transferred to the current Landlord when the property was purchased.

The Landlord and the Tenant agree that the Tenant and the current Landlord entered into a new tenancy agreement for the rental unit, which began on September 01, 2011. A copy of this tenancy agreement was submitted as evidence. This tenancy agreement was not signed by either party until September 06, 2011.

The Tenant submitted a copy of the original tenancy agreement that shows a security deposit of \$1,050.00 was due on January 27, 2010.

The most recent tenancy agreement, which was submitted by the Tenant, indicates that a security deposit is not due and the same tenancy agreement, which was submitted by the Landlord, indicates that a security deposit of \$1,050.00 is due. The Agent for the Landlord stated that he believes the portion of the agreement relating to the security deposit was left blank when it was signed because the Tenant had advised the Landlord the deposit had been paid and that it was subsequently amended to show that the deposit was due once the Landlord determined that the deposit had not been paid.

The Agent for the Tenant stated that prior to signing the most recent tenancy agreement he spoke with a representative of the Landlord, whom he knows only as "A". He stated that A told him he understood that a security deposit of \$1,050.00 had been paid. The Agent for the Tenant stated that he also spoke with this individual, who told him that he could find no record of this payment.

The Agent for the Landlord #2 stated that he believes there were attempts to collect a security deposit after September 01, 2011. The Agent for the Tenant stated that no

such attempts were made, as "A" had agreed it had been paid. The Landlord submitted no evidence to show that the Landlord made any attempt to collect a security deposit after September 01, 2011.

The Landlord and the Tenant agree this tenancy ended on September 30, 2013; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Tenant stated that the Tenant provided the Landlord with a forwarding address on November 21, 2013. The Tenant submitted a copy of a letter dated November 21, 2013, in which the Tenant provided a forwarding address. The Agent for the Tenant stated that this letter was either served by hand, by fax, or by mail. The Agent for the Landlord stated that this letter was never received.

The Agent for the Landlord stated that a forwarding address was first received by the Landlord in February of 2014, when the Application for Dispute Resolution was received. He stated that the Landlord did not apply to retain the security deposit at that time as the Landlord did not believe a deposit had been paid.

Analysis:

Section 93 of the *Residential Tenancy Act (Act)* stipulates that the obligations of a landlord under this *Act* with respect to a security deposit or a pet damage deposit run with the land or reversion. This means that a party who purchases a rental unit which is occupied by a tenant is obligated to comply with section 38 of the *Act* as soon as that party becomes the new landlord of the rental unit.

I find that I have no evidence to show precisely when the Landlord purchased this rental unit. I can therefore not conclude, with any degree of certainty, that the obligations outlined in section 93 of the *Act* had not reverted to the Landlord prior to September 01, 2011. I find it entirely possible that the Landlord purchased the property prior to September 01, 2011, in which case section 93 of the *Act* became applicable at the time of purchase.

On the basis of the tenancy agreement between the Landlord and the Tenant, I find that the parties did not enter into a written tenancy agreement until September 06, 2011. Although the tenancy agreement declares that the agreement begins on September 01, 2011, the agreement was not signed until September 06, 2011. In spite of the start date on the agreement, I find that the parties did not formalize this agreement until September 06, 2011 and I therefore find it reasonable to conclude that for the period between September 01, 2011 and September 05, 2011, they were operating on the basis of the tenancy agreement the Tenant had with the former landlord.

Given that the newest tenancy agreement declared that the tenancy agreement began on September 01, 2011, I find it reasonable to conclude that the Landlord owned the

rental unit on, or before, September 01, 2011. This is based on my conclusion that a landlord can only have a tenancy agreement for property the landlord lawfully possesses. I therefore find that the obligations of section 93 applied to this rental unit on September 01, 2011.

I find that the Tenant paid a security deposit of \$1,050.00 on January 27, 2010 to the original landlord. In reaching this conclusion I was influenced by the original tenancy agreement, which tends to corroborate the Agent for the Tenant's testimony that a deposit was paid on January 27, 2010.

In determining that a security deposit was paid for this rental unit, I have placed limited weight on the Agent for the Landlord's testimony that the Landlord has no record of this payment. I find it entirely possible that the original landlord simply neglected to provide this information to the Landlord. In determining this matter I note that the Landlord did not submit a statement of adjustment or any other document to corroborate the claim that the security deposit for this rental unit was not transferred to the Landlord when the property was purchased.

In determining this matter I was also influenced, to some degree, by the most recent tenancy agreement, which indicated that a security deposit was not due when the agreement was signed. In my view, this indicates that the Tenant informed the Landlord that a deposit had been paid before he entered into this new agreement, which lends credibility to his current claim that one had been paid.

In the absence of any evidence to show that the Landlord attempted to collect a security deposit after September 01, 2011, I find it was reasonable for the Tenant to conclude that the Landlord agreed that a security deposit of \$1,050.00 had been paid and had been transferred to this tenancy. As it was reasonable for the Tenant to conclude that the security deposit had been transferred to this tenancy, I find that the Tenant was not required to attempt to recover the deposit until his current tenancy ended.

In determining this matter I have placed little weight on the Agent for the Tenant's testimony that a representative of the Landlord by the name of A told him he understood the security deposit had been paid, as this testimony was countered by the testimony of the Agent for the Landlord. In the absence of evidence from A, I find this testimony has limited value.

I find there is insufficient evidence to conclude that the letter dated November 21, 2013 was received by the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the testimony that it was served or that refutes the testimony that it was not received. As the Agent for the Tenant cannot recall how it was served, I find his testimony in this regard is not compelling.

On the basis of the undisputed evidence, I find that the Landlord did receive a forwarding address, in writing, when the Landlord received the Tenant's Application for Dispute Resolution sometime in February of 2014.

On the basis of the testimony of the Agent for the Landlord and the testimony of the Tenant, I find that this tenancy ended on September 30, 2013. I find this testimony more compelling than the written documents from the Tenant, who declared the tenancy ended on October 30, 2013, simply because the Tenant did not attend the hearing in support of the written declaration.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution within the legislated time period.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing his Application.

Conclusion:

The Tenant has established a monetary claim of \$2,150.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: May 27, 2014

Residential Tenancy Branch