



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 6, 2014 by the Tenant to obtain a Monetary Order for the return of his security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by each other and gave affirmed 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

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the Tenant entered into a written tenancy agreement with the previous owner, for a fixed term tenancy that commenced on April 1, 2008, and switched to a month to month tenancy after one year. The Tenant was required to pay rent on the first of each month in the amount of \$820.00 and on March 1, 2006 the Tenant paid \$350.00 as the security deposit. The tenancy ended January 31, 2014, at which time the Tenant provide the property manager with his forwarding address.

The Tenant submitted evidence that the Landlord failed to return his security deposit. Instead, he received a letter dated February 18, 2014, indicating that he owed the Landlord money.

The Landlord testified that they purchased the property in April 2009. They had not yet filed an application for Dispute Resolution to keep the security deposit and they do not have the Tenants written permission to keep the deposit.

In closing, the Tenant stated that he wished to waive his right to claim double the deposit and indicated that he was seeking only the original deposit of \$350.00.

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.

The undisputed evidence supports the tenancy ended January 31, 2014, and that the Tenant provided the Landlord with his forwarding address on January 31, 2014.

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 Tenants' security deposit in full or file for dispute resolution no later than February 15, 2014. The Landlord did neither and sent the Tenant a letter dated February 18, 2014, advising him that he owed the Landlord money.

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.

The Tenant waived his right to the doubling provision. Accordingly, I find the Tenant has met the burden of proof to establish his claim and I award him return of the original deposit of \$350.00 plus interest of \$12.10 for a total amount of **\$362.10**.

Conclusion

The Tenant has been awarded a Monetary Order for **\$362.10**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do 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: June 16, 2014

Residential Tenancy Branch

