



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HIGH KELLY RANCH LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 27, 2014, by the Tenant, to obtain a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord for this application.

The Tenant submitted documentary evidence which indicated that the Landlord was served with copies of the application for dispute resolution and Notice of dispute resolution hearing, on March 3, 2014 by registered mail. Canada Post receipts and proof that the package was signed received on March 5, 2014, were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding on March 5, 2014, in accordance with section 89 of the Act; and I proceeded in the Landlord's absence.

Issue(s) to be Decided

Is the Tenant entitled to Monetary Compensation?

Background and Evidence

The Tenant provided undisputed evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on September 20, 2013 and was set to end on March 31, 2014. The Tenant was required to pay rent of \$1,200.00 on the first of each month and on September 20, 2013 the Tenant paid \$600.00 as the security deposit. The tenancy agreement required that the Tenant provide \$1,200.00 as a security deposit for the utilities which was mutually agreed to be applied the final bills at the end of the tenancy. The tenancy ended December 28, 2013, at which time the Tenant provided the Landlord with his forwarding address and the Landlord provided the Tenant with the \$600.00 security deposit refund cheque.

The Tenant submitted evidence that he entered into an agreement with the Landlord to pay to refill 11% of the propane tank and to pay the outstanding telephone bill out of the utility security deposit. He stated that he had a photo of the 3000 litre propane tank meter which indicates the tank was at 60% when he took possession and it was at approximately 49% when they moved out; which is how they determined he would pay

for 11%. He argued that the Landlord deducted too much for propane and the Landlord delayed in returning the balance of his utility security deposit so he is seeking double the utility deposit amount.

The Tenant noted that the copy of the bill he received indicates 414 litres of propane was purchased and not 330 litres which is 11% of 3000 litres; so he is of the opinion that the Landlord filled someone else's tank in addition to his rental unit tank. He argued that the unit had a dual heating system and that they heated the unit with the three wood stoves and not with the propane. He argued that he should only have to pay \$402.90 (\$505.46 divided by 414 litres x 330 litres).

The Tenant pointed to his evidence as proof that the Landlord deducted \$150.00 (3 months @ \$50.00 per month) for the telephone bill; however, she only provided him a copy of one bill which shows the amount charged was \$47.43 not \$50.00. The Tenant argued that he should only pay for the one bill of \$47.43 as no other bills were provided to him.

In closing, the Tenant stated that he received the Landlord's partial refund dated February 23, 2014, of \$544.54 a few days after he filed his application for Dispute Resolution. He confirmed that he has cashed this cheque and it has cleared the bank okay. He is seeking the balance owing and the doubling provision.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Given the evidence before me, in the absence of any evidence from the landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by his documentary evidence.

The Act defines a "**security deposit**" to mean money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property.

As per the foregoing, I find the utility security deposit of \$1,200.00 held in trust by the Landlord, meets the definition of the Act is therefore, subject to section 38 of the Act.

The evidence supports the tenancy ended December 28, 2013, and the Tenant provided the Landlord with his forwarding address on December 28, 2013.

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 Tenant's utility security deposit in full or file for dispute resolution no later than January 12, 2014. The Landlord did not file for Dispute Resolution and only returned a partial amount of the deposit at the end of February 2014.

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 deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish his claim and I award him double his utility security deposit plus interest as follows:

Double utility deposit (2 x \$1,200.00)	\$2,400.00
Interest from September 20, 2013	<u>0.00</u>
LESS: Propane @ 11%	-402.90
Telephone Bill	-47.43
Partial Payment Received	<u>-544.54</u>
Total amount due to the Tenant	\$1,405.13

The Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order for **\$1,455.13** (\$1,405.13+ \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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 19, 2014

Residential Tenancy Branch

