



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD O FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution the Tenant confirmed her intent on seeking monetary compensation for more than \$140.52, as listed at the top of her application; as she wrote in the details of the dispute that she was seeking double \$70.26 as interest owed on her deposit and other costs of \$9.59 for registered mail and \$170.00 for two hours of her time related to filing this dispute.

Based on the aforementioned I find the Tenant had an oversight or made a clerical error in not writing the total amount of her claim being \$379.70, at the top of her application, when completing the online application, as she clearly indicated her intentions in the details of the dispute. Therefore, I amend her application, pursuant to section 64(3)(c) of the Act to be a monetary claim for \$379.70.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 1, 2014, by the Tenant to obtain a Monetary Order for: the return of all or part of her security deposit; for other reasons; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the scheduled teleconference hearing, gave affirmed testimony, and confirmed receipt of evidence served by the Tenant. 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 relevant 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 parties executed a written tenancy agreement for a tenancy that commenced on September 19, 1998 and ended January 31, 2014. In August 1998 the Tenant paid \$600.00 as the security deposit. A move in condition inspection report was completed on September 10, 1998; however, no condition inspection report was completed at move out. The Landlord provided the Tenant \$600.00 as the return of her security deposit on January 31, 2014, but did not provide the Tenant with payment for the accrued interest.

The Tenant testified that she is seeking double the interest owed on her security deposit that was held in trust by the Landlord from August 1998 to January 31, 2014. She submitted evidence that she sent a registered letter to the Landlord on March 7, 2014, requesting the accrued interest of \$70.26 which included her forwarding address. The Landlord responded by e-mail on March 17, 2014, and refused to pay the interest stating they were keeping the interest to apply it against a charge for cleaning costs.

The Tenant submitted that she should also be compensated for the two Canada Post packages she sent to the Landlord and for two hours of her time at \$85.00 per hour. She argued that her wage is \$85.00; therefore, the Landlord should have to pay her at that rate.

The Landlord testified and confirmed that they do not have the Tenant's written permission to keep the security deposit interest, they do not possess an Order issued by the *Residential Tenancy Branch* granting them authority to keep the interest, and they had not filed an application to keep the interest.

The Landlord offered the Tenant the opportunity to consider a settlement agreement whereby no future claims would be brought against the other party, the interest would be applied against the cleaning bill, and no money would be paid to the Tenant. The Tenant declined the offer and stated she wished to proceed with her application.

Analysis

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.

Section 38(6) of the *Act* states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The evidence supports that the tenancy ended January 31, 2014, and the Tenant's forwarding address was sent to the Landlord by registered mail on March 7, 2014, which the Landlord received and responded to on March 17, 2014. The Landlord did not file an application for dispute resolution and they did not pay the Tenant the interest that had accrued on the security deposit.

Based on the evidence before me, I find that the Landlord breached section 38(1) of the *Act* by failing to return the interest of \$70.26 that had accrued on the security deposit from August 1998 to January 31, 2014. That being said, I find that the doubling provision in Section 38(6) of the *Act*, as listed above, does not provide doubling on the interest portion that is owed; rather Section 38(6) specifies that the landlord "must pay the tenant double the amount of the security deposit, pet damage deposit, or both".

As per the above I award the Tenant the return of the interest owed on her security deposit in the amount of **\$70.26**.

In regards to registered mail fees for bringing this application forward, I find that the Tenant has chosen to incur these costs that cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss which results from a breach of *Act*. Costs incurred due to a service method choice are not a breach of the *Act*. Therefore, I find that the Tenant may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*.

The Tenant has claimed \$170.00 as compensation for two hours of her time to prepare this application and evidence; however, the Tenant has not provided evidence to support that it took her two hours of her time or when that time occurred. Furthermore the Tenant did not provide evidence to support that her wage is \$85.00 per hour or that her time is worth \$85.00 per hour outside of her working hours. Accordingly, I find there to be insufficient evidence to support the claim for \$170.00 to bring this claim forward, and the claim is dismissed, without leave to reapply.

The Tenant has partially succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order for **\$120.26** (\$70.26 + \$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: July 24, 2014

Residential Tenancy Branch

