



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENTLAND INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on June 17, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the Tenant who provided affirmed testimony that she personally served the Landlords' resident manager with copies of the application for dispute resolution and Notice of dispute resolution hearing, on June 20, 2014, in the presence of a witness. The resident manager signed a document acknowledging receipt of the documents.

Based on the above, I find the Landlords were sufficiently served notice of this proceeding and I continued with the hearing in absence of the Landlords or their Agent.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The Tenant submitted evidence that she entered into a written tenancy agreement for a fixed term tenancy that commenced on March 15, 2013 and was scheduled to switch to a month to month after March 31, 2014. The Tenant was required to pay rent of \$950.00 on the first of each month and on March 4, 2013 the Tenant paid \$475.00 as the security deposit.

The Tenant testified that on or before April 30, 2014, she provided the Landlords with one month's written notice to end her tenancy effective May 31, 2014. She said she moved out early and made arrangements for the Landlords to conduct the move out inspection on May 30, 2014, during which she provided the Landlords with her forwarding address in writing.

The Tenant submitted evidence that the Landlords returned \$350.00 of her deposit and the Landlords kept \$125.00. The Tenant argued that she did not agree for the Landlords to keep any portion of her security deposit and was therefore seeking to recover double her deposit.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord(s) 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 her documentary evidence.

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 evidence supports the tenancy ended May 30, 2014, and the Landlords received the Tenant's forwarding address May 30, 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 Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than June 14, 2014. The Landlords did neither, returning only a portion of the deposit.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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 her claim and I award her double his security deposit plus interest, less partial payment received, in the amount of **\$600.00** (2 x \$475.00 deposit + \$0.00 interest – \$350.00 payment).

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

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$650.00** (\$600.00 + \$50.00). 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: October 21, 2014

Residential Tenancy Branch

