



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on June 24, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Tenant A.S. who provided affirmed testimony. No one appeared on behalf of the Landlord despite this hearing being convened to hear matters pertaining to the Landlord's application.

Issue(s) to be Decided

1. Should the Landlord's application be dismissed with or without leave to reapply?
2. Has the Landlord proven entitlement to retain the Tenants' security deposit?

Background and Evidence

The Tenant testified that his co-tenant, K.L. passed away recently, and he was handling all matters for both of them.

The Tenant submitted that he and K.L. entered into a co-tenancy with the Landlord for a one year lease that began in July 2012. A subsequent lease was created effective 2013 however the Tenants never received a signed copy of the second lease. The Tenants were required to pay \$780.00 on the first of each month and on or before July 2012 they paid \$390.00 as the security deposit.

The Tenant stated that they vacated the property on May 1, 2014, after they were served a 30 day eviction notice on April 11, 2014. He argued that the Landlord was provided their forwarding address within the first week of May 2014 and that was the address she had listed on her application for dispute resolution.

The Tenant requested that their security deposit be returned to him as he is now taking care of K.L.'s business now that he is deceased. He noted that he was not seeking the return of double his deposit at this time and would be satisfied with the return of the \$390.00 that was paid.

Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Landlords, the telephone line remained open while the phone system was monitored for twelve minutes and no one on behalf of the Landlord called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides that the hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any oral submissions or documentary evidence from the applicant Landlord, I order their application dismissed without liberty to reapply.

The *Residential Tenancy Policy Guideline # 17*, the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act.

The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit

within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

I accept that the Landlord received the Tenants' forwarding address near the beginning of May 2014, as written on the Landlord's application for dispute resolution that was filed on June 25, 2014, 14 days after this tenancy ended.

The Landlord's application has been dismissed; therefore, she is not entitled to retain the Tenants' security deposit. The Tenant has requested the return of only the original amount of the security deposit; therefore, I Order the Landlord to return the \$390.00 security deposit to the Tenant forthwith.

Conclusion

I HEREBY DISMISS the Landlords' application, without leave to reapply.

The Tenant A.S. has been issued a Monetary Order in the amount of **\$390.00**. 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: October 28, 2014

Residential Tenancy Branch

