



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Preliminary Issues

Upon review of the Tenant's application the Landlord submitted that her first and last name had been reversed. Neither party objected to correcting the application to display the correct order of the Landlord's first and last name. Accordingly, the style of cause of this decision reflects the correct order of the Landlord's names, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 26, 2014 by the Tenant to obtain a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Landlord testified that she did not receive copies of the Tenant's evidence. The Tenant argued that he had sent his evidence in the same package as the hearing documents and his application by registered mail on June 28, 2014. Given the submissions of the Tenant I accept that his evidence was served upon the Landlord in the same package as his application and notice of hearing documents. That being said, the relevant evidence was undisputed and confirmed in the Landlord's oral testimony.

The Tenant testified that the Landlord contacted him a few days ago to ask for his email address so she could send him the Landlord's evidence. He contacted the Residential Tenancy Branch and determined that the Landlord was attempting to serve her evidence late as it was less than 7 days prior to the hearing.

Based on the foregoing, and upon review of the Landlord's evidence that consisted of 4 photographs, I noted that the Landlord's evidence is not relevant to the matters before me. Therefore, as the Landlord's evidence was not served upon the Tenant within the required timeframes and is not relevant, it will not be considered.

As a procedural note the Tenant was calling into the proceeding from a cellphone and the connection was so bad that at 10:37 a.m. I instructed the Tenant to hang up and call

back into the teleconference. The Tenant rejoined the conversation at 10:39 a.m. and there was still a lot of back ground noise and static so I continued the hearing by putting the Tenant's call on mute until it was time for me to hear his testimony.

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 executed a written tenancy agreement for a month to month tenancy with the previous owner that commenced on January 1, 2014. The Tenant was required to pay rent on the first of each month in the amount of \$900.00 and on or before January 1, 2014 the Tenant paid \$450.00 as the security deposit.

The Tenant testified that he vacated the property at the beginning of June 2014 and has not received any money from the Landlord for the return of his deposit.

The Landlord testified that the tenancy ended sometime in June 2014 after the Landlord verbally requested that the Tenant move out. The Landlord stated she has no record of a condition inspection report being completed at move in and she did not conduct an inspection at move out. She acknowledged receiving the Tenant's letter with his forwarding address sometime in June 2014.

The Landlord confirmed that she is holding the full \$450.00 deposit and argued that the Tenant did not clean the rental unit when he moved out. She confirmed that she has not made application to keep the deposit and she does not have the Tenant's permission, in writing to keep any portion of the deposit.

In closing, the Landlord offered to settle these matters by paying the Tenant \$350.00; however the Tenant refused the offer.

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 at the beginning of June 2014 and that the Tenant provided the Landlord with their forwarding address in writing on June 4, 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 June 19, 2014. The Landlord did neither.

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 security deposit plus interest in the amount of **\$900.00** (2 x \$450.00 + \$0.00 Interest).

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 for **\$950.00** (\$900.00 + \$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: October 29, 2014

Residential Tenancy Branch

