



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application requesting a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord said that his nineteen page evidence submission was not given to the tenant. Therefore, the landlord's written submission was set aside as it is a matter of fairness that the tenant be given the submission. The landlord was at liberty to make oral submissions.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit paid?

Background and Evidence

The tenancy commenced on January 20, 2013. Rent was \$2,800.00, due on the 20th day of each month. A security deposit in the sum of \$1,400.00 was paid.

A copy of the tenancy agreement supplied as evidence showed that the tenant and the landlord respondent's ex-wife signed the agreement. The landlord respondent said he is not the landlord and that his ex-wife should have been named as the respondent.

The landlord stated that he and his ex-wife were co-owners of the rental unit. In October 2011, as part of a marital breakdown, his wife was given permission of the Supreme Court of British Columbia to possess and rent the property; which she did.

The tenant said that he had email communication with the female landlord in February 2013; she was now in China and told the tenant he should communicate with her ex-husband.

There was no dispute that in late February 2014 the tenant and landlord did communicate and that within several days they met. A copy of a March 2, 2014 agreement signed by the tenant and landlord, as "owner," set out an agreement to end the tenancy. This agreement indicated that the landlord had post-dated cheques to January 2015 that had been provided to him by his ex-wife. The landlord informed the tenant the home must be sold, as the result of an Order of the Court. The tenant signed, agreeing to vacate as soon as possible.

The parties agreed the deposit could be used to cover rent for "the following period." The agreement also stipulated that the tenant could remain in the house without paying any rent until the owner informed the tenant that the house had been sold.

An email sent by the landlord on March 28, 2014 stated that the landlord believed the security deposit should be dealt with according to the tenancy agreement; a copy of the agreement was requested. The landlord said he was authorized to deal with the matter, so the tenant should contact him rather than others.

The tenant located a new residence and vacated the unit on April 4, 2014.

An email sent to the tenant on April 21, 2014, by the landlord, stated that the landlord's lawyer determined there was no need to return the deposit as 2 months had passed since the last rent paid on February 20, 2014. The landlord said he would meet with the tenant if he could present some legal basis for his request.

There was no dispute that by early June 2014 the landlord had received a letter from the tenant, dated April 25, 2014; requesting return of the security deposit to a forwarding address provided in that letter.

The landlord said that it is his ex-wife who should return the security deposit. After the sale of the home, as part of the marital breakdown, the creditor received all funds. The landlord said he could talk to his ex-wife about the deposit; he also said he has no way of reaching her.

The tenant said he only wishes to have the security deposit returned, in the sum paid.

Analysis

I have considered the definition of landlord set out in the Act:

"landlord", in relation to a rental unit, includes any of the following:

(a) **the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,**

(i) *permits occupation of the rental unit under a tenancy agreement, or*

(ii) **exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**

(b) *the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*

(c) *a person, other than a tenant occupying the rental unit, who*

(i) *is entitled to possession of the rental unit, and*

(ii) *exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

(d) *a former landlord, when the context requires this*

From the evidence before me I find, on the balance of probabilities, that the respondent was a landlord. I have based this decision on email evidence supplied which contained direction given to the tenant that the respondent was now authorized to act in relation to bringing the tenancy to an end. The respondent signed the March 2, 2014 agreement ending the tenancy, as "owner;" further demonstrating his right to exercise powers and perform duties as a landlord. The agreement signed between the parties on March 2, 2014 convinced me that the landlord was in a position to return the deposit; although I found that agreement confusing and contradictory in relation to rent that should be paid, or not.

I also considered the decisions taken by the landlord as proof that he was in a position to authorize return of the deposit, but that he declined to do so, on the advice of his lawyer. This refusal conflicts with the landlord's submission that he was not required to return the deposit as he was not the landlord. From the evidence before me I find, on the balance of probabilities, that the landlord was able to return the deposit but that he chose not to; perhaps on inaccurate advice.

Matrimonial issues do not affect the tenancy; unless the tenant is a party to the Court proceeding. Despite any marital problems and Court orders for sale and the need to satisfy debts, a landlord is required to hold the security deposit in trust. The deposit must then be disbursed, in accordance with the Residential Tenancy Act.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit.

I find that the landlord received the tenants' written forwarding address no later than early June 2014. The landlord did not return the deposit and did not submit an application for dispute resolution, claiming against the deposit.

Therefore, I find that the tenant is entitled to return of the security deposit, as claimed.

I find that the tenant's application has merit and that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,450.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant is entitled to return of the security deposit and the filing fee cost.

This decision is final and binding and 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 02, 2014

Residential Tenancy Branch

