



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a hearing with respect to an application for a monetary order and for the return of a security deposit including a claim for double the amount of the deposit. The hearing was conducted by conference call. The applicant and the respondent attended. The applicant's friend, described as a witness was present with him during the hearing.

Issue(s) to be Decided

Is the applicant entitled to a monetary award and if so, in what amount?

Is the applicant entitled to the return of a security deposit, including double the amount?

Background and Evidence

The rental unit is a furnished basement suite in North Vancouver. The landlord owns the property and lives in the upstairs portion of the house. The applicant saw the unit advertised on the internet and telephoned to inquire about a rental. According to the applicant, he was seeking to rent a furnished unit for a three month period for his nephew and family to occupy. The applicant viewed the rental unit in June. He testified that he agreed to rent it for a three month term beginning July 1, 2014 at a monthly rent of \$1,250.00 and he paid the landlord a deposit of \$625.00 on June 19, 2014. The applicant said that the landlord later refused to rent the unit to him and he was forced to find another unit to rent on short notice at a higher price. The applicant said that he rented another unit in Coquitlam for three months at a monthly rental of \$1,850.00. The applicant said that he sent the landlord an email with his address and requested the return of the security deposit, but he did not receive a payment although the landlord promised to send it. The applicant claimed double the amount of the original \$625.00 deposit and he claimed \$600 per month for the intended three month duration of the tenancy as a rent differential between what he agreed to pay the respondent and what he claimed to have paid for alternate accommodation. The applicant submitted a copy of a tenancy agreement signed on July 1, 2014. He said that the landlord named in the

agreement is a friend. He approached his friend when the respondent refused to rent the unit and made arrangements to rent his unit at a higher rent. He said that he did not have time to look for less expensive accommodation because his nephew and family were to arrive on July 5th.

The applicant submitted copies of e-mails exchanged with the landlord as well as receipts for the security deposit. One receipt was handwritten by the landlord; the other was typed by the applicant and signed by the parties as well as the applicant's friend, who was present when the deposit was paid. The receipt from the respondent said in part as follows:

This is a receipt for half months damage deposit of \$625 CND for a 3 month rental for the fully furnished 1 bedroom basement suite I have for rent.

The agreement is also for the first months rent to be paid June 30th, 2014 with occupancy July 1st 2014. A registered BC rental agreement shall be presented to you by my agent (name) as soon as possible for both parties to sign.

The landlord testified that he advertised the rental unit for rent on Craigslist as a furnished suite. Because he is a new landlord and also works out of the country, he sought help from a friend to assist him and to act as his agent from time to time. The landlord said that the applicant viewed the rental unit and wanted to rent it for his nephew and family starting July 1st. The landlord said that the applicant wanted him to sign a tenancy agreement at the same moment, but the landlord insisted that the agreement should be signed by the people who would be occupying the unit when they arrived.

The landlord said that two days before the tenancy was to begin, the applicant or his friend telephoned the landlord's agent. He said that the caller demanded a key to the rental unit, insisted upon an inspection and was very rude to her. The landlord called the applicant and said that the rental unit was occupied until the end of June and he could not do an inspection or give out keys early. He also repeated that he would only sign an agreement with the actual occupants of the rental unit. The landlord testified that he received a second call, this time from the landlord's friend who repeated the demands for keys and an inspection. The landlord said he became alarmed at their insistence and felt intimidated by what he felt was threatening behaviour. The landlord said that he told the caller that he would return the security deposit and would meet the applicant at a coffee shop to do so. The landlord said that the applicant or his friend accepted this proposition on the phone. He said that he then sent a confirming e-mail to the applicant, but he received a reply saying that the applicant did not agree to cancel the contract, but asked only for a formal agreement and the key before paying the first month rent. The landlord said that after a further email exchange he received another

telephone call from the applicant's friend, who demanded that he continue with the contract, when the landlord said that he did not agree to deal with the caller, he replied and said that they would come to the landlord's house on July 1st to get the keys and sign the contract. The landlord objected and said he would call the police if they turned up at his house. The landlord then received an e-mail from the applicant advising him to send the deposit to the address provided in the e-mail.

The landlord testified that he obtained a money order and mailed it to the address he was given. The landlord received subsequent e-mails from the applicant advising that the payment had not been received. The landlord said that he then made inquiries to determine whether the money order had been cashed, but before he received a response, he was served with the application for dispute resolution. The landlord submitted documentary evidence that established that he obtained a money order in the amount of \$675.00 on July 2, 2014 (the landlord said that he purchased a money order in an incorrect amount; it should have been for \$625.00). The landlord received a report that the money order was not cashed and he received a refund of the original money order. The refund cheque was sent on August 18, 2014. The landlord did not send a further payment to the applicant because this dispute resolution hearing was pending.

Analysis

The *Residential Tenancy Act* provides by section 20 that:

20 A landlord must not do any of the following:

- (a) Require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;

The landlord's agent showed the rental unit to the applicant and the landlord accepted a security deposit from the applicant on June 19, 2014, but the landlord took the position that he would only sign a tenancy agreement with the actual occupants of the rental unit. The landlord's acceptance of the security deposit was in breach of the *Residential Tenancy Act* because of his refusal to sign a tenancy agreement with the applicant at the time he received and accepted the security deposit.

The applicant has submitted that the respondent was not entitled to recant from the agreement to rent the unit commencing July 1st and although I accept that submission, I do not find that the applicant has proven on a balance of probabilities that he is entitled to an award for the claimed amount for increased rental costs. The applicant produced a copy tenancy agreement said to have been made with his friend as landlord and dated July 1, 2014, but the applicant has not provided sufficient evidence to show that he actually paid rent to the named landlord. There are no documents evidencing any

payments made by the applicant with respect to the alleged tenancy. The applicant bears the burden of proving his claim and I find that the applicant has not proved on a balance of probabilities that he personally suffered a loss on account of rent payments made for July, August and September and this aspect of the claim is dismissed without leave to reapply.

With respect to the security deposit paid, the respondent returned the security deposit to the address provided by the applicant, and he did so on July 2, 2015. I accept the evidence presented that the money order was sent to the address provided, but never cashed. Apart from the e-mail from the applicant, the respondent did not receive the applicant's forwarding address in writing until he was served with the application for dispute resolution. I find that the applicant is entitled to a monetary award in the amount of the original deposit, but not to an award of double the amount of the deposit because the respondent did comply with section 38 of the *Residential Tenancy Act* by repaying the deposit within 15 days. The respondent was unable to confirm whether the payment was received until the issuer of the money order made a determination that it had not been cashed and this did not occur until August 18, 2014 which was after the applicant submitted his application for dispute resolution. The applicant is entitled to recover the \$50.00 filing fee for this application, for a total award of \$675.00.

Conclusion

I have awarded the applicant the sum of \$675.00; all other claims have been dismissed without leave to reapply. I grant the applicant an order under section 67 in the amount of \$675.00. This order may be filed in the 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: February 4, 2015

Residential Tenancy Branch

