



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sian Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that he served the Application for Dispute Resolution, the Notice of Hearing, and documents/digital evidence the Tenant wishes to rely upon as evidence to the Landlord, via registered mail. He is not certain of the date of service; however he believes the documents were mailed sometime in January of 2015.

The Landlord stated that he believes Canada Post delivered the aforementioned documents sometime in January of 2015, although he did not receive them until he returned to Canada on February 03, 2015.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure requires an Applicant to serve the Application for Dispute Resolution to the Respondent within three days of the hearing package being made available by the Residential Tenancy Branch. The Tenant stated that he believed he could serve these documents no later than three weeks prior to the hearing date.

As the Tenant filed his Application for Dispute Resolution on August 20, 2014 and he did not serve the Application for Dispute Resolution to the Landlord until sometime in January of 2015, I find that the Tenant did not serve these documents in accordance with Rule 3.1 of the Residential Tenancy Branch Rules of Procedure. As the Landlord did receive the Application for Dispute Resolution and he attended the hearing, I find it reasonable to proceed with this hearing even though the documents were not served in accordance with Rule 3.1.

In my view, proceeding with this matter does not unduly disadvantage the Landlord, as he still had over one month to respond to the Tenant's claim for compensation. I note that the Landlord's responses to the Tenant's claim are limited to:

- The security deposit was repaid within fifteen days of the tenancy ending and the date the Landlord received the Tenant's forwarding addressing, in writing
- The Landlord filed an Application for Dispute Resolution seeking to retain the security deposit within fifteen days of the tenancy ending and the date the Landlord received the Tenant's forwarding addressing, in writing
- The Landlord had written authority from the Tenant to keep all, or some, of the security deposit
- The Tenant abandoned the right to claim the security deposit by not participating in a scheduled inspection of the rental unit at the beginning or the end of the tenancy
- The Landlord has a monetary Order from the Residential Tenancy Branch that requires the Tenant to pay money to the Landlord.

Rule 3.10 of the Residential Tenancy Branch Rules of Procedure stipulate that a party submitting digital evidence must submit digital evidence in a format that is accessible to all parties. The Rules stipulate that prior to the start of the hearing the party submitting the digital evidence must determine that all parties can access the digital evidence.

The Landlord stated that he has been unable to access the digital evidence served to him by the Tenant. The Tenant stated that he made no effort to confirm that the Landlord could access his digital evidence. As the Landlord is unable to access the Tenant's digital evidence, it was not considered when making a determination in this matter.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Landlord and the Tenant agreed:

- that this tenancy began on September 30, 2013
- that a security deposit of \$800.00 was paid
- that this tenancy ended on July 15, 2014
- that a time to complete a condition inspection report was not scheduled at the beginning or the end of the tenancy
- that the Tenant did not provide the Landlord with written authority to retain any portion of the security deposit
- that the Landlord did not return any portion of the security deposit
- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that on July 17, 2014 he gave the Landlord a document, which contained his forwarding address. The Landlord stated that he received this document on July 16, 2014 or July 17, 2014.

The Landlord stated that he did not return the Tenant's security deposit because rent was in arrears. He acknowledged that he has not filed an Application for Dispute Resolution seeking compensation for any reason, including unpaid rent.

The Landlord stated that the Tenant verbally agreed that the Landlord could keep \$400.00 of the security deposit to outstanding rent. The Tenant denies a verbal agreement was made regarding the security deposit.

The Landlord repeatedly attempted to raise issues regarding unpaid rent and other problems with the tenancy and he was repeatedly advised that those matters are not relevant to the issues in dispute at these proceedings. He was advised that he has the right to file an Application for Dispute Resolution in which he seeks compensation from the Tenant, but that the Landlord's claims for compensation would not be considered at these proceedings.

Analysis

On the basis of the undisputed evidence, I find that:

- the Tenant paid a security deposit of \$800.00
- the Tenant did not provide the Landlord with written authority to retain any portion of the security deposit
- the Tenant did not fail to participate in a scheduled inspection of the rental unit at the beginning or the end of the tenancy
- the Landlord does not have a monetary Order from the Residential Tenancy Branch that requires the Tenant to pay money to the Landlord.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

In determining this matter I have placed no weight on the Landlord's submission that the Tenant gave him verbal permission to apply a portion of the security deposit to rent that is due. Section 38(4) of the *Act* authorizes a Landlord to retain all or part of a security deposit if the Tenant has given written authority to retain it. The *Act* does not authorize a Landlord to retain all or part of a security deposit even if the Tenant gives the Landlord verbal authority to do so.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$1,650.00 which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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.

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: March 11, 2015

Residential Tenancy Branch

