



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit and the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 9, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on October 1, 2003 as a month to month tenancy. The tenancy ended October 31, 2013. Rent was \$1,030.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 on June 3, 2003.

The Tenant said that she gave notice on September 23, 2013 to the Landlord that she was moving out of the rental unit on October 31, 2013. The Tenant said that she also gave the Landlord her forwarding address in writing. The Tenant continued to say that she was not sure of the exact date that she gave the Landlord the forwarding address. The Landlord said she is not disputing receiving the Tenant’s forwarding address although she was not sure of the date either. It was agreed the Tenant gave the Landlord her forwarding address sometime in September or October 2013. The Tenant said no move in condition inspection report was completed and no move out condition inspection report was completed.

The Tenant said she has not received her security deposit back and now she is applying for double the security deposit in the amount of \$475.00 X 2 = \$950.00.

As well the Tenant said she is applying for any interest on the security deposit and to recover the filing fee of \$50.00.

The Landlord agreed there were no condition inspection reports completed at the start and at the end of the tenancy. The Landlord said she was not aware these reports were required. The Landlord said she sent in evidence to show damage caused by the Tenant during the tenancy. The Landlord said she also included paid receipts to show the cost to repair the damage caused by the Tenant.

The Tenant said the rental unit was not newly painted on move in and the unit was in poor condition when she moved in therefore some of the damage the Landlord is claiming was there at the start of the tenancy.

The Landlord was questioned if she had made an application to retain the Tenant's security deposit. The Landlord said she has not made any applications and she was not aware that a landlord had to make an application to retain a tenant's security deposit.

Analysis

Section 24 of the Act says: (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is

extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) **does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

Further:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I accept the testimony of both the Tenant and the Landlord that the Tenant gave the Landlord a forwarding address in writing in September or October, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by the end of November, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$475.00 in the amount of $\$475.00 \times 2 = \950.00 . Further I award the Tenant \$16.82 of interest payable on the security deposit accruing from June 3, 2003 to March 2, 2015.

As the Tenant was successful in this matter I also order the Tenant to recover the filing fee of \$50.00 from the Landlord; pursuant to section 67 a monetary order for \$1,016.82 has been issued to the Tenant.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$1,016.82 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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 02, 2015

Residential Tenancy Branch

