



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Preliminary Issues

When checking in each participant the Landlord clarified his first and last name. Upon review of the Tenant's application I noted that the Tenant had written the Landlord's name in reverse order. Accordingly, I amended the style of cause on the first page of this decision to show the Landlord's first and last name in the correct order, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on August 20, 2014 to obtain a Monetary Order for the return of double their security deposit. .

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's legal advocate. The Landlord and Tenant gave affirmed testimony and confirmed receipt of evidence served by the Tenant.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

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

The undisputed evidence was that the Tenant entered into a written fixed term tenancy that began on September 1, 2011 and switched to a month to month tenancy after one year. Rent of \$2,600.00 was due on or before the first of each month and on August 26, 2011 the Tenant paid \$1,300.00 as the security deposit.

The Tenant testified that he gave notice to end his tenancy and he vacated the rental unit by the end of February 2014. He noted that the Landlord failed to list a service address for the Landlord on the tenancy agreement so on March 18, 2014 he left his forwarding address in writing, in the mail box at the rental unit address. The Tenant submitted that he attended the rental unit several times after March 18th, 2014 to request his security deposit be returned; however, the Landlord always refused saying that the Landlord had to pay for painting and repairing the rental unit.

The Landlord testified that the Tenant did not return the keys to the rental unit until March 4, 2014 and the Tenant did not provide him with proper notice to end his tenancy. The Landlord confirmed receiving the Tenant's forwarding address, as described by the Tenant, but he could not recall the exact date.

The Landlord confirmed that he did not make an application to keep the security deposit; he did not have an Order issued by the Residential Tenancy Branch giving him authority to keep the security deposit; and he did not have the Tenant's written permission to keep the security deposit. The Landlord argued that he thought he was entitled to keep the security deposit because he was not given proper notice.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. Therefore, notwithstanding the Landlord's submission that the keys were not returned until March 4, 2014, I accept the Tenant's submission that the tenancy ended February 28, 2014, when he vacated the rental unit.

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.

As noted above, the tenancy ended February 28, 2014, and the Landlord received the Tenants' forwarding address on or around March 21, 2014, three days after they were left in the mail box, pursuant to section 90 of the Act. Therefore, the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than April 5, 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 above, I find that the Tenant has succeeded in proving the merits of their claim, and I award them double their security deposit plus interest in the amount of **\$2,600.00** (2 x \$1,300.00 + \$0.00 interest).

Conclusion

The Tenant has been awarded a Monetary Order for **\$2,600.00**. 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: March 16, 2015

Residential Tenancy Branch

