



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for a return of his security deposit and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a return of his security deposit and for recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted evidence that this tenancy began in November 2012, ended on November 30, 2014, and that he paid a security deposit of \$437.50 at the beginning of the tenancy.

The tenant submitted that he provided the landlord with his forwarding address in a text message on December 1 or 2, 2014, and that the landlord has not returned his security deposit.

The tenant submitted further that the method of communication employed by the two parties during this tenancy was text message and telephone.

The tenant's monetary claim is \$437.50, comprised of his security deposit.

In response to the tenant's application, the landlord submitted that she could not confirm that she received the tenant's forwarding address on December 1 or 2, 2014, but did agree that she received it in a text message the first part of December 2014.

The landlord confirmed that she did not return the tenant's security deposit due to alleged damage by the tenant to the rental unit or file an application claiming against the security deposit. The landlord agreed that the parties communicated by text message during the tenancy.

Analysis

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposits within 15 days of the later of receiving the tenant's forwarding address in writing or the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit and pet damage deposit.

Residential Tenancy Branch Policy Guideline #17.3 states that unless a tenant has specifically waived the doubling of the deposit, either on their application or at the hearing, the Arbitrator will order the return of double the deposit if the landlord has not filed an application within 15 days of receiving the tenant's forwarding address or the end of the tenancy.

In the case before me, the tenant communicated his forwarding address in a text message. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the parties' evidence.

Although the Act does not recognize text message transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's forwarding address through his December 2014, text message to the landlord, with the landlord's confirmation of the same in early December 2014, sufficiently served, pursuant to section 71 of the Act.

The undisputed evidence therefore shows that the tenancy ended on November 30, 2014, the landlord received the tenant's forwarding address in early December 2014, and that the landlord has neither filed an application to retain the tenant's security deposit nor returned the deposit in full.

I therefore grant the tenant's application for dispute resolution and order that the landlord pay the tenant double his security deposit, in the amount of \$437.50 each.

Pursuant to section 72(1) of the Act, I also order that the landlord pay the tenant his filing fee for this application in the amount of \$50.00.

Due to the above, I find the tenant is entitled to a total monetary award of \$925.00, comprised of his security deposit of \$437.50, doubled to \$875.00 and the filing fee of \$50.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of her monetary award of \$925.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation is granted.

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 18, 2015

Residential Tenancy Branch

