



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Interior Community Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: MND, MNSD, FF
For the tenant: MNSD, FF

Introduction and Preliminary Matters

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The tenant applied for a return of her security deposit and for recovery of the filing fee paid for this application.

This hearing began on February 26, 2015, was attended by the landlord "KE" and the tenant, and dealt only with evidence issues as the tenant submitted that she had not received the landlord's documentary evidence submissions, received by the Residential Tenancy Branch ("RTB") on February 18, 2015, only 8 days prior to the hearing. The hearing was then adjourned and the landlord was directed to serve or re-serve their documentary evidence to the tenant at least 14 days in advance of the adjourned hearing. An Interim Decision was entered on March 3, 2015, with those instructions to the landlord.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the parties' respective applications.

At the reconvened hearing, the tenant attended; however, the landlord did not attend. The tenant submitted that she has not yet received any evidence from the landlord since the hearing on February 26, 2015.

The tenant testified that she served the landlord with her application for dispute resolution and notice of hearing by leaving it with the landlord on October 29, 2014.

Based upon the submissions of the tenant, I find the landlord was served the tenant's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present her 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 her security deposit and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted that this tenancy began on June 1, 2013, ended on September 30, 2014, and that she paid a security deposit of \$350.00 at the beginning of the tenancy. In evidence was a copy of the receipt showing this payment.

The tenant submitted that she provided her written forwarding address personally to the landlord on August 25, 2014, when she met the landlord at the rental unit, as the address was listed on the written notice to the landlord that she was vacating by September 30, 2014.

The tenant submitted that the landlord has not returned the tenant's security deposit and that she did not receive the landlord's application for dispute resolution claiming against the deposit until 2 days after the tenant served her own application for dispute resolution on the landlord, on October 29, 2014, or in other words, she received the landlord's application on October 31, 2014.

The tenant's monetary claim is \$350.00 and recovery of the filing fee of \$50.00.

Analysis

Landlord's application-

In the absence of the landlord at the reconvened hearing to consider the applications of the parties, pursuant to section 10.1 of the Rules and due to the appearance of the tenant, I dismiss the landlord's application, without leave to reapply.

Tenant's application-

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 deposit within 15 days of the later of the end of a tenancy or receiving the tenant's forwarding address in writing. 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.

In considering the undisputed evidence before me, I find the landlord received the tenant's written forwarding address on August 28, 2014, and the end of the tenancy was September 30, 2014. The landlord's application shows that it was filed on October 15, 2014. Section 59(3) of the Act and 3.1 of the Rules state that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

The tenant's undisputed evidence shows that the landlord served their application to the tenant on October 31, 2014, 2 days after receiving the tenant's application seeking a return of her security deposit and 16 days after making their own application.

I therefore find that service of the landlord's application and Notice of Hearing were not effected in accordance with the Act and the Rules.

Additionally, the landlord failed to attend the hearing on their own application and failed to serve the tenant with their documentary evidence, as required by the Rules and the Interim Decision.

In considering whether the landlord has met their obligation of making an application within 15 days of the end of the tenancy, I considered that the landlord did not serve their application on the tenant until after receiving the tenant's application, or 16 days after making the application, did not attend the hearing for their own application, and did not serve the tenant with their supporting evidence, all as required under the Act and Rules, as set out above. I therefore find that in effect, the landlord abandoned their application.

As the landlord did not follow the application process required under the Act, I find that the landlord did not comply with their requirements of making an application within 15 days of the end of the tenancy. In that respect, I find the tenant is therefore entitled to receive double the amount of her security deposit of \$350.00.

Pursuant to section 72(1) of the Act, I also order that the landlord pay the tenant her 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 \$750.00, comprised of her security deposit of \$350.00, doubled to \$700.00, 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 \$750.00, which is 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 landlord's application is dismissed, without leave to reapply.

The tenant's application for monetary compensation is granted and she has been issued a monetary order in the amount of \$750.00.

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: April 13, 2015

Residential Tenancy Branch

