



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC; DRI; MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; to dispute an additional rent increase; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail, sent on October 4, 2014. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. The Tenant testified that the registered package was returned to her "unclaimed".

I find that the Landlord was duly served with the Notice of Hearing documents by registered mail, pursuant to the provisions of Section 89 of the Act. Service in this manner is deemed to be effective 5 days after mailing the documents. Despite being deemed served with the documents, the Landlord did not sign into the teleconference and the Hearing continued in her absence.

Preliminary Matters

The tenancy has ended and therefore the Tenant's application for an Order that the Landlord comply with the Act is dismissed.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to recovery of rent and parking fees that were overpaid?

Background and Evidence

The Tenant gave the following testimony:

This tenancy began on May 1, 2014. Monthly rent was \$1,100.00, due on the first day of each month. There was an additional fee of \$30.00 per month for parking. The Tenant paid 6 months' parking fees in advance in April, 2014. The Tenant paid a security deposit in the amount of \$550.00 on April 25, 2014.

The Landlord increased the rent to \$1,300.00 without notice or agreement of the Tenant, effective August 1, 2014. The tenancy ended on September 15, 2014, because the Landlord asked the tenant to move out because she could not afford the rental unit. The Tenant paid prorated rent in the amount of \$450.00 for the period of September 1 – 15, 2014. The Tenant stated that she has overpaid rent by \$100.00, calculated as follows:

Legal rent for August, 2014	\$1,100.00	
Amount paid for August, 2014	<u>-\$1,300.00</u>	
Subtotal		\$200.00 CR.
Legal rent for September 1 – 5, 2014	\$550.00	
Amount paid for September 1 – 5, 2014	<u>-\$450.00</u>	
Subtotal		<u>-\$100.00</u>
Amount overpaid by Tenant		\$100.00

There was no Condition Inspection Report completed at the beginning or the end of the tenancy. The Tenant did not give the Landlord permission to retain any of the security deposit. The Tenant provided her forwarding address to the Landlord on September 20, 2014. The Landlord has not returned any of the security deposit.

The Tenant seeks a monetary award, calculated as follows:

Return of the security deposit	\$550.00
Compensation pursuant to Section 38 of the Act	\$550.00
Overpayment of parking fee (1.5 months)	\$45.00
Overpayment of rent	<u>\$100.00</u>
Total claim	\$1,245.00

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I accept the undisputed testimony of the Tenant in its entirety. I find that the Landlord did not have a right under the Act to retain any of the Tenant's security deposit. The Landlord did not file an application for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit that the Landlord withheld ($\$550.00 \times 2 = \mathbf{\$1,100.00}$).

I find that the Landlord illegally raised the rent, contrary to the provisions of Part 3 of the Act and Part 4 of the regulations. I allow the Tenant's claim for overpayment of rent in the amount of **\$100.00**.

I also find that the Tenant overpaid for parking. The Tenant paid for parking from May 1 – October 31, 2014, but moved out of the rental unit at the Landlord's request on September 15, 2014. Therefore, I allow the Tenant's claim for overpayment of parking fees in the amount of **\$45.00**.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,245.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 27, 2015

Residential Tenancy Branch

