Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on January 14, 2015 for Other Reasons. In the details of the dispute the Tenant wrote:

> *RETURN OF OUR DAMAGE DEPOSIT*
> *(My current address is not in [Province name], but in the [Country name]. Your template does allow me to choose [Country name], but is geared to only Canadian mailing addresses. My real address is [full address*]
> [Reproduced as written excluding Province, Country, and full address]

The hearing was conducted via teleconference and was attended by the Tenant and one Landlord, A.B. Each person gave affirmed testimony and the Landlord affirmed that she was representing both Landlords in this matter. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

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.

The Landlord confirmed receipt of the Tenant's application, hearing documents, and the Tenant's evidence and indicated that they were received shortly after February 17, 2015. She stated that she received the following documents as the Tenant's evidence: the tenancy agreement; the November 15, 2013 typed agreement signed by both the Landlord and the Tenant; and a receipt from a service company.

Evidence that a party wishes to rely upon must be served upon the other party and the Residential Tenancy Branch in order to uphold the principals of natural justice. Therefore, as there were other documents received on the RTB file from the Tenant that were not received by the Landlord will not be considered in this matter.

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. Following is a summary of the submissions 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 for the return of double his security deposit?

Background and Evidence

The undisputed evidence was the parties entered into a written fixed term tenancy agreement that began on June 15, 2013 and was scheduled to end or switch to a month to month tenancy after July 15, 2014. Rent of $1,900.00 was payable on the first of each month and on June 10, 2013 the Tenant paid $950.00 as the security deposit.

The Tenant testified that he ended the tenancy and vacated the property by November 15, 2013. He submitted that he attended the move out inspection with the Landlord on November 15, 2013 and on that date the Landlord and he signed the document he provided in evidence where he agreed that the Landlord would withhold $200.00 from his security deposit and the Landlord agreed to return the balance of his security deposit of $750.00 on November 21, 2013. The Tenant argued that the Landlord failed to return the deposit as agreed and he now seeks the return of double of his deposit.

The Landlord testified and confirmed she had signed the document submitted by the Tenant; however, his forwarding address was not written on the bottom of that document at the time she signed it. She argued that she has not returned the deposit because at the time the Tenant moved out she was told of two addresses, one in another province and one in another country.

The Landlord focused the majority of her testimony on the fact that she could file an application herself to seek compensation for lost rent. She also argued that she was first provided the Tenant's forwarding address in writing on February 17, 2015 and she has since been given two additional addresses for the Tenant, one which was written as the return address on the application in which she received his application and another written on this current application, which are both different than what was clarified in the April 14, 2014 Decision.

The parties were given the opportunity to settle these matters in accordance with section 63 of the Act. However, the parties were too far apart and the hearing reverted to the arbitration as per the Tenant's application.

The Tenant argued that the Landlord keeps saying she is going to file an application but never does. He asserted that the Landlord has refused to pick up registered mail he had sent to her in the past so this last time he had a friend send the hearing documents to the Landlord on his behalf noting that his address is clearly indicated on his most recent application for Dispute Resolution. He submitted that the Landlord used the same excuse in the April 2014 hearing that she did not have his correct address and the Arbitrator confirmed his address in that decision as well.

The last paragraph on page two of the April 14, 2014 Decision the Arbitrator wrote as follows:

> *Both parties provided their service addresses during the hearing for the benefit of the other and file records have been changed to reflect the correct addresses for service.*

In closing, both the Landlord and Tenant confirmed their current service address as written on the front page of this Decision.

Analysis

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

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.

In this case the undisputed evidence was that the tenancy ended November 15, 2013, when the Tenant vacated the rental unit and completed the move out inspection. At that time the Landlord continued to hold the Tenant's security deposit of $750.00, as the parties had previously agreed that the Landlord would retain $200.00 from the security deposit for the move out fee.

Notwithstanding the Landlord's submission that she first received the Tenant's forwarding address on February 17, 2015, because she was confused after being given two other addresses, I conclude that the undeniable evidence was that the Landlord was clearly informed of the Tenant's forwarding address during the April 14, 2014 hearing, as indicated in the April 14, 2014 Decision. Therefore, I find that the Landlord

was required to return the Tenant's $750.00 security deposit in full or file an application for dispute resolution no later than April 29, 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. Therefore, I find that the Tenant has succeeded in proving the merits of his application and I award him double his security deposit plus interest in the amount of **$1,500.00** (2 x $750.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenant has succeeded with his application; therefore, I HEREBY ORDER the Landlord to return double the Tenant's security deposit plus the filing fee to the address provided by the Tenant during this hearing, as listed on the front page of this Decision.

In the event the Landlord does not comply with my Order, the Tenant may serve the Landlord with the enclosed Monetary Order issued in the amount of **$1,550.00** ($1,500.00 + $50.00). This Order is legally binding and may be filed with the 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: June 15, 2015

Residential Tenancy Branch