



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

This matter was set for hearing at 1:30 p.m. on this date. The applicant did not attend.

The tenant was present at the scheduled start time of the hearing;

The tenants' legal counsel provided affirmed testimony that a November 28, 2014 letter was sent to the landlord, on behalf of the tenant, requesting return of the security deposit. The letter included a forwarding address for the tenant. A copy of the letter was supplied as evidence.

On December 9, 2014 the landlord applied claiming against the deposit using the forwarding address provided by the tenant.

The deposit has not been returned to the tenant.

Analysis

The landlord had applied to retain the deposit paid by the tenant. Any deposit held in trust by the landlord must be disbursed as required by section 38 of the Act. Residential Tenancy Branch policy (#17) suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant. I find this to take a reasonable stance.

From the evidence before me I find that the tenant paid a security deposit in the sum of \$212.50. The deposit was paid when the tenancy began five years ago. The tenant vacated at the end of February 2014. The tenant said he paid full rent for that month.

In accordance with section 62(3) of the Act I find that the landlord received the tenants' forwarding address no later than December 9, 2014; the date the landlord applied claiming against the deposit using the forwarding address supplied by the tenant. When the landlord received the written forwarding address, provided in the November 28, 2014 letter, I find that the landlord claimed against the deposit within 15 days.

However, pursuant to section 81(a)(c) of the Act I find that I must refuse the landlord's application as the landlord has failed to diligently pursue the application by attending the

hearing in support of the claim against the security deposit. Making an application against a security deposit, on its own, is not sufficient to retain the deposit and does not allow a party to avoid the Act. The landlord must attend the hearing in support of the claim against the deposit.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. I have refused the application as a result of the landlords' failure to diligently pursue the application. Therefore, I find that the landlord was required to return the security deposit to the tenant within 15 days of December 9, 2014.

My refusal of the landlords' claim then results in application of section 38(6) of the Act. If a landlord fails to apply claiming against the deposit or to return the deposit within 15 days of the end of the tenancy and the date the written forwarding address is given, whichever date is later, the landlord must pay the tenant double the deposit.

Therefore, in accordance with section 38(6) of the Act and RTB policy I find that the tenant is entitled to return of double the security deposit.

Based on these determinations I grant the tenant a monetary Order in the sum of \$425.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlords' application is refused.

The landlord is Ordered to return double the \$212.50 security deposit to the tenant.

The tenant is entitled to a monetary Order in the sum of \$425.00.

This decision is final and binding and 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: July 17, 2015

Residential Tenancy Branch

