



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as the 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 her security deposit, doubled, and for recovery of the filing fee paid for this application.

The tenant's agent 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, the parties confirmed receipt of the other's evidence and no issue was raised regarding service of the application.

Thereafter the participants 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 her security deposit, doubled, and to recovery of the filing fee paid for this application?

Background and Evidence

The parties confirmed there was no written tenancy agreement. I heard testimony that the tenancy began on February 14, 2014. The tenant's agent submitted without dispute that the tenancy ended on February 1, 2015 and that monthly rent was \$700.00.

In support of the application, the tenant's agent submitted that the tenant paid a security deposit of \$350.00 and did not receive a receipt.

The tenant's agent submitted that the tenant's written forwarding address was provided to the landlord in a letter hand delivered to the landlord on February 25, 2015, and that the landlord has not returned the security deposit.

The tenant's agent submitted that there was no move-in or move-out condition inspection report.

The tenant's monetary claim is \$700.00, comprised of her security deposit of \$350.00, doubled.

The landlord denied receiving a security deposit from the tenant. The landlord confirmed that he had not provided receipts to the tenant for the rent payments and that he had not filed an application for dispute resolution seeking to end the tenancy due to non-payment of a security deposit.

In rebuttal, the tenant's agent submitted that when the tenant moved into the rental unit in the middle of February 2014, the tenant paid, \$700.00, \$350.00 for a half of month's rent, and \$350.00 for the security deposit. The tenant's agent then pointed to the tenant's evidence, which was a series of text messages between the tenant and the landlord and the tenant's agent and the landlord. The tenant's agent submitted that the text messages confirm that a security deposit was paid, but that the landlord refused to return it due to alleged damage to the rental unit and for cleaning.

The tenant's additional relevant evidence was a copy of the letter containing her written forwarding address.

The landlord also referred to his evidence, which were several pages of notes, which appear to be a recollection of the landlord's version of events regarding this tenant and this tenancy. I note that on these pages of notes, the landlord recorded rent payments.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the tenant has the burden of proof to substantiate their claim on the civil standard, meaning on a balance of probabilities.

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, 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 receiving the tenant's forwarding address in

writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of her security deposit has been extinguished in this case, as I find that the landlord failed to provide any evidence that there was a move-in or move-out condition inspection report.

In the case before me, the landlord disputes that he received a security deposit.

In considering whether or not the tenant paid a security deposit, I find the evidence supports that she did. I considered that the landlord never filed an application seeking to end the tenancy for failure to pay a security deposit, as allowed under section 47(1)(a) of the Act.

The landlord, in this case, has failed to provide the tenant with a written tenancy agreement, as required under section 13(1) of the Act. I also find that the evidence shows that the landlord has failed to issue the tenant receipts for rent payments.

I also found the notes of the landlord, recalling the events of the tenancy, to be self-serving and unilateral, without tenant response or input, whereas the tenant's evidence shows that the landlord informed the tenant he was not returning the security deposit due to alleged damage. I found these repeated statements of the landlord in his text messages to the tenant and her agent here confirmed that the tenant paid a security deposit.

I also relied upon the fact the evidence shows that the landlord has failed to provide receipts for this tenancy, which caused me to question the reliability of the landlord's notes reflecting payments, and only sent as evidence in response to the tenant's application shortly before the hearing.

For the reasons above, I prefer the evidence of the tenant and find that she paid a security deposit of \$350.00.

The undisputed evidence shows that the tenancy ended on February 1, 2015, that the landlord received the tenant's written forwarding address on February 25, 2015, 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, pursuant to section 62(3) of the Act, order that the landlord return the tenant's security deposit. Under section 38(6) of the Act, I order that the amount of the security deposit be doubled.

I also approve the tenant's request for recovery of her filing fee of \$50.00.

Due to the above, I grant the tenant 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 tenant's application requesting a return of her security deposit, which was doubled by operation of the Act, 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: August 31, 2015

Residential Tenancy Branch

