



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR LANE MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord refund his security deposit;
- b) Compensation for rent and loss of television service.

Service:

The tenant /applicant gave evidence that he served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he paid a security deposit which has not been refunded and that is he also entitled to compensation for half of one month's rent and unauthorized charges made by Shaw cable?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that neither party knows exactly when the tenancy but they estimate it as one year ago. The tenant said his rent was \$700 a month and he paid \$350 security deposit in cash but got no receipts. He said he was also allowed to move out in the middle of the month so he claims \$350 in overpayment of rent. He waives his claim for Shaw cable as he said the matter was settled between him and Shaw. He was unsure when he vacated but provided a lease as evidence that he started his new tenancy on April 1, 2015.

The landlord said he is not the correct landlord. His company has the same name but is a limited company. He agrees that he received money monthly from a lady who died and to whom the tenant states he paid the rent and security deposit but said she had a separate company and it was not a limited company. He does not deny that the tenant paid rent or a security deposit but says he is not responsible as he never received that

money; he says he does not know what the deceased lady did with the money, she paid him some less deductions.

The tenant said this is just a ploy to deny him a refund of his money. He says this landlord collected the money that he paid to the deceased manager although her husband who is still alive says it was a separate company who collected the rent. He claims double his security deposit pursuant to section 38 of the Act.

Included with the evidence are copies of the tenant's new tenancy agreement dated April 1, 2015 and a letter from that landlord requiring him to leave as of April 30, 2015 as he is not allowed co-tenants.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

There was a problem understanding the landlord as English is his second language and his telephone line was very noisy; neither the tenant nor I could understand his points at times but we persisted until we understood his position. Also, the tenant had provided no documentary evidence of a lease or payments but only sworn evidence. Apparently he was on a bus and could not refer to notes or his documents at home.

I find the weight of the evidence is that the tenant had an oral tenancy agreement with the named landlord whose affairs were handled by a lady who is now deceased. Section 1 of the Act provides that a tenancy agreement may be written or oral. I find the tenant's evidence credible that he paid a security deposit of \$350 in 2014 to a person who was allegedly managing the property for the landlord. I find the evidence is that he vacated the property in March 2015; his new lease supports this date as it commences April 1, 2015. I find it credible that he supplied his forwarding address to the landlord in writing in April 2015 but has never received a refund of his security deposit.

Section 38 of the Act provides that within 15 days from the later of the tenant vacating and providing his forwarding address in writing, the landlord must file an application to claim against the deposit or refund the deposit. If the landlord does not file an application or refund it, the tenant is entitled to recover twice his security deposit. There is no evidence the landlord ever made an application to claim against the deposit. I find the tenant entitled to recover \$700 (\$350x2).

In respect to his claim for a refund of rent because he moved out early, I find insufficient evidence that the landlord agreed to an early move-out date or to a refund of rent so I

dismiss this portion of the tenant's claim. I find the date on his new lease is not consistent with an early move out date from these premises.

The tenant waived his claim for Shaw cable costs so it is not addressed in this hearing.

Although the landlord's representative claimed he is a separate entity from the named landlord because he has the same name but in a limited company, I find the weight of the evidence is that the tenancy agreement was made by a deceased manager who collected rents and security deposits and remitted them to the company whether or not it is now a limited company and a tenancy and security deposit liabilities survive a change in landlords. Even if the manager did not account for their sources, I find the weight of the evidence is that the named company landlord benefitted from the rents and security deposits as the landlord's representative noted she paid net amounts after deducting for expenses. I find the company named as landlord in the tenant's application is liable to repay double the security deposit to the tenant.

Conclusion:

I find the tenant entitled to a monetary order against the company for double the security deposit or \$700 total. I dismiss his claims for a rent refund and Shaw charges due to insufficient evidence. No filing fee was involved.

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: September 09, 2015

Residential Tenancy Branch

