



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction and Preliminary Matter

This telephone conference call hearing was convened as the result of the landlord's amended application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord initially filed an application for dispute resolution seeking a monetary order for unpaid utilities and for recovery of the filing fee paid for this application. The landlord then amended his application to additionally include a claim against the tenant's security deposit.

The hearing began at 1:00 p.m. as scheduled and the telephone system remained open and was monitored for 10 minutes. During this time, the applicant/landlord did not dial into the telephone conference call hearing; however the tenant appeared at the hearing and the hearing proceeded in the landlord's absence.

Issues

Should the landlord's amended application be dismissed?

Is the tenant entitled to a return of his security deposit?

Background and Evidence

The tenant submitted that the tenancy began on or about March 1, 2014, ended on February 28, 2015, monthly rent was \$2700.00, and that he paid a security deposit and a pet damage deposit of \$1350.00 each. Since the tenancy ended, the landlord has returned the pet damage deposit in full, using the address the tenant provided at the end of the tenancy, but has not returned the security deposit.

The tenant submitted further that he provided the landlord with his written forwarding address on either February 28, 2015, or March 1, 2015, on the move-out condition inspection report.

Analysis and Conclusion

In the absence of the landlord to present their claim and due to the tenant's appearance at the hearing, pursuant to section 10.1 of the Residential Tenancy Branch Rules of Procedure (Rules), I dismiss the landlord's application, without leave to reapply.

As to the tenant's security deposit, Residential Tenancy Branch Policy Guideline 17 states the arbitrator will order a return of the tenant's security deposit on the application of the landlord claiming against the security deposit, such as in cases where the landlord's application is not successful.

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

The undisputed evidence in this case shows that the tenancy ended on February 28, 2015, and the landlord received the tenant's written forwarding address on either February 28, 2015 or March 1, 2015. Therefore the landlord had until March 16, 2015, to file an application claiming against the security deposit or return the security deposit.

In this case, the landlord's original application seeking compensation for unpaid utilities and for recovery of the filing fee paid for this application was filed on March 14, 2015; however, his amended application claiming against the tenant's security deposit was filed March 22, 2015.

I therefore find that the landlord failed to comply with section 38(1) of the Act and under section 38(6) of the Act, the security deposit must be doubled.

As I have determined that the tenant's security deposit of \$1350.00 must be doubled, and as I have dismissed the landlord's amended application, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2700.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be served upon the landlord and 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.

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 2, 2015

Residential Tenancy Branch

