



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The parties confirmed receipt of the hearing documents and relevant evidence.

Issue(s) to be Decided

Is the tenant entitled to return of double the \$700.00 security deposit paid?

Background and Evidence

This one year fixed term tenancy commenced on November 1, 2013. Rent was due on the first day of each month. A security deposit in the sum of \$700.00 was paid.

The landlord confirmed that a move-in condition inspection was not completed.

A copy of the tenancy agreement was supplied as evidence.

There was no dispute that the tenancy ended effective January 31, 2015 based on written notice given in December 2014. The tenant paid rent to the end of the tenancy. The tenant vacated on January 29, 2015.

The parties agreed the landlord told the tenant he would meet with her on January 31, 2015 to walk through the unit. The tenant said she could not meet on a weekend. The landlord did not issue a final written notice for inspection and a date for the inspection was not confirmed.

The landlord confirmed receipt of the tenants' written forwarding address sent via registered mail in April 2015. The address was received some time in April 2015. The landlord did not return the deposit as he used it to pay for damage to the unit.

Analysis

Residential Tenancy branch policy suggests:

*The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit **is extinguished if:***

- ***the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or***
- ***having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.***

(Emphasis added)

I find this to take a reasonable stance.

Pursuant to section 24(1) of the Act, I find that the landlord's right to claim against the deposit was extinguished. The landlord must arrange a move-in condition inspection report and when he failed to do so at the start of the tenancy he extinguished his right to claim against the deposit for damages.

Section 38(4) of the Act allows a landlord to retain the deposit if the tenant agrees in writing at the end of the tenancy or an Order is issued allowing the landlord to retain the deposit. Neither situation occurred in this instance.

Section 38(5) of the Act provides:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(Emphasis added)

When the landlord received the tenant's written forwarding address in April 2015, as provided by section 38(1) of the Act, the landlord was required to return the deposit, in full within 15 days. The landlord was at liberty to submit a claim for compensation any time up to two years beyond the end date of the tenancy.

As the landlord extinguished his right to claim against the security deposit I find that no later than May 15, 2015 the landlord was required to return the deposit to the tenant. The landlord has confirmed that he does not have a claim for anything other than damage to the rental unit.

Therefore, I find, pursuant to section 38(6) of the Act that the tenant is entitled to return of double the \$700.00 security deposit.

As the tenant's application has merit I find the tenant is entitled to return of the \$50.00 filing fee cost.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,450.00. 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 tenant is entitled to return of double the \$700.00 security deposit.

The tenant is entitled to recover the \$50.00 filing fee.

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: September 14, 2015

Residential Tenancy Branch

