



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELENA FOLCH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 2, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started in November, 2007 as a fixed term tenancy for 1 year and then continued as a month to month tenancy. The tenancy ended May 31, 2015. Rent was \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 on October 6, 2007. A move in condition inspection report was completed on move in but no move out condition inspection report was completed at the end of the tenancy.

The Tenant’s Advocate said that the Tenant moved out of the rental unit on May 31, 2015 as a result of a 2 Month Notice to End Tenancy for the Landlord’s use of the property. The Tenant said she gave the Landlord a forwarding address in writing on May 31, 2015. The Tenant’s Advocate continued to say that the Tenant hired a cleaning company to clean the unit and the Tenant provided a paid receipt in the amount of \$198.45. The Tenant Advocate said the Tenant also would like the May, 2015 rent cheque returned. The Tenant’s Advocate said the May, 2015 rent was free because of the 2 Month Notice to End Tenancy for the Landlord’s use of the property.

The Tenant's Advocate continued to say that the Tenant has applied for double the security deposit as stated in section 38 of the Act and that any claim the Landlord may think she has on the Tenant's deposit was extinguished because the Landlord did not do a move out condition inspection report and the Landlord did not make an application to retain the Tenant's security deposit. The Tenant's Advocate said the Tenant is applying for $2 \times \$475.00 = \950.00 plus \$8.85 in interest on the security deposit and \$50.00 to recover the filing fee. The Advocate said the Tenant's application is for a total of \$1,008.85.

The Landlord said she did not do a move out condition inspection report and she did not make a formal application to the Residential Tenancy Branch to keep the Tenant's security deposit. The Landlord said she sent in photographs that show the unit was not in good condition at the end of the tenancy and that is why the Landlord kept the Tenant's security deposit of \$475.00.

The Tenant's Advocate said the Tenant submitted a video of the unit on move out and the video shows the unit to be in good condition.

The Landlord said in closing she had to renovate the rental unit and it is unfair that the Tenant is applying to get double her security deposit back. The Landlord said she has gone to great expense to renovate the rental unit.

The Tenant's Advocate said the Tenant has followed the Act and is entitled to double the security deposit plus interest to be paid to her.

During the hearing the Landlord said she destroyed the Tenant's rent cheque for May, 2015 so that it could not be cashed.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on May 31, 2015. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by June 15, 2015. Consequently I find for the Tenant and grant an order for double the security deposit of \$475.00 in the amount of $\$475.00 \times 2 = \950.00 plus interest earned on the deposit of \$8.85.

As the Tenant was successful in this matter I also order the Tenant to recover the filing fee of \$50.00 from the Landlord; pursuant to section 67 a monetary order for \$1,008.85 has been issued to the Tenant.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$1,008.85 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

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: November 03, 2015

Residential Tenancy Branch

