



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested a Monetary Order for return of her security deposit and to recover the filing fee.

Only the Tenant appeared at the hearing. She was accompanied by her boyfriend, F.V., who also resided in the rental unit with her. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlord with the Notice of Hearing and her Application for Dispute Resolution and evidence on July 22, 2015 by registered mail. She provided the registered mail tracking number to me. Under the Act documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 27, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of her security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified as to the tenancy as follows: the tenancy began on approximately August 15, 2014; monthly rent was \$1,800.00; the Tenant paid a security deposit of \$900.00; and the tenancy ended on August 1, 2015.

The Tenant confirmed that she did not sign over a portion of the security deposit.

The Tenant testified that the Landlord did not perform a move in or move out condition inspection report as required by the *Residential Tenancy Act*.

The Tenant testified that the Landlord lives outside of Canada and operates a property rental business both in Canada as well as the country in which she resides. The Tenant provided copies of email communication between herself and the Landlord confirming that the parties regularly communicated by email.

In an email dated June 24, 2015 the Tenant provided the Landlord with her forwarding address to which to send the security deposit. The Landlord acknowledged receipt of this email by return email July 17, 2015 wherein the Landlord also wrote that she was not returning the security deposit as she believed the Tenant broke the year lease.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of section 38 of the *Residential Tenancy Act*.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as the agreement of the Tenants, or an Order from an Arbitrator. Here the Landlord did not have any authority under the Act to keep

any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Accordingly, I award the Tenant \$1,800.00 representing double the \$900.00 security deposit paid. As the Tenant's application had merit I also award her recovery of the \$50.00 filing fee for a total award of **\$1,850.00**. The Tenant is entitled to a Monetary Order for \$1,850.00 and must serve the Order on the Landlord. Should the Landlord fail to pay this amount the Tenant may file the Order in the B.C. Provincial Court (Small Claims Division) and enforce the Monetary Order as an Order of that Court.

Conclusion

The Landlord failed to perform incoming and outgoing condition inspection reports. The Landlord also failed to apply to retain the security deposit within 15 days of receiving the Tenant's forwarding address in writing. Pursuant to section 38 and 72, the Tenant is entitled to recover double their security deposit as well as the filing fee.

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: December 10, 2015

Residential Tenancy Branch

