



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FATHER DELESTER HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to the representative of the tenant's estate's application for a Monetary Order to recover the tenant's security deposit; other issues involved in the recovery of rent and to recover the filing fee from the landlord for the cost of this application.

The tenant's executor of her estate (the executor) and agents for the landlord attended the conference call hearing and gave sworn testimony. The landlord and the executor provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

- Is the tenant's estate entitled to recover the security deposit?
- If so should the security deposit be doubled?
- Is the tenant's estate entitled to a Monetary Order to recover any rent paid?

Background and Evidence

The parties agreed that this month to month tenancy started on December 01, 2008. At the end of the tenancy the rent for this unit was \$414.00 per month plus \$41.00 for cable. Rent was due on the 1st of each month. The tenant paid a security deposit of \$150.00 at the start of then tenancy. Both parties attended a both in and a move out condition inspection of the unit. The tenancy ended on September 20, 2015.

The tenant's representative testified that his mother, the tenant, passed away on August 22, 2015 and he is the executor of her estate. He gave written notice to end the tenancy to the landlord on August 31, 2015 with an effective date of September 30, 2015. The landlord came and did a walkthrough of the unit at the beginning of September and said they wanted to replace the carpets. They asked if the executor could have his mother's belongings removed sooner than September 30, 2015 and if so they would reimburse some of the rent for September. The executor testified that he had removed all belongings on September 20, 2015 and the landlord did another walkthrough on September 23, 2015. The executor testified that the landlord should therefore return 10 days rent equal to \$146.77 to the tenant's estate.

The executor testified that the landlord has not returned the tenant's security deposit and a forwarding address was provided in writing on October 15, 2015. The executor testified that after the move out inspection was completed the landlord did not provide a copy of the report and the executor had to pick this up from the landlord a week later. Between the time of the inspection and picking up the report the landlord had added wording on the report that implies the executor gave permission for the landlord to keep the security deposit for wall washing and blind cleaning. The executor testified that he did not give the landlord permission to keep all or part of the security deposit. The executor testified that as the landlord did not return the security deposit or file a claim to keep it the executor seeks to amend the application to recover double the security deposit to an amount of \$300.00 plus any accrued interest.

The landlord agreed that they said they would reimburse the executor any rent for September if the executor was able to move the tenant's belongings out sooner than September 30, 2015. The landlord testified that as the rent was actually \$414.00 per month then 10 days rent is equal to \$ \$138.00.

The landlord testified that they did not add anything to the move out report but do agree that they did not put a dollar amount in the section where the executor agreed they could keep part of the security deposit to wash the walls and blinds. The landlord testified that all charges were documented in a letter sent to the executor in which it shows a charge for cleaning was made for \$200.00 and repairs of \$140.00. Therefore the landlord deducted these amounts from the rent owed to the executor and the security deposit. This left an amount of \$51.81 owed by the tenant's estate. There were also more repairs that the executor was not charged for.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the executor's application to recover rent of \$146.77; the landlord did not dispute that they had agreed to reimburse the executor some rent for September if he was able to move out prior to the end of the month. The landlord testified that the rent was actually \$414.00 per month and the balance paid of \$41.00 was for cable. I am satisfied from the evidence before me that rent was \$414.00 per month and therefore I limit the claim to recover rent for September to \$13.80 a day for 10 days to an amount of **\$138.00**.

With regard to the application to recover double the security deposit; s. 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on September 20, 2015 and the landlord did receive the tenant's executor's forwarding address in writing on October 15, 2015. As a result, the landlord had 15 days from this date until October 30, 2015, to return the tenant's security deposit or file an application to keep it. The landlord argued that the executor had agreed in writing that the landlord could keep the security deposit when he signed the move out condition inspection report. I have reviewed that report and there is no dollar amount on that report that the executor has agreed the landlord may keep and I have considered the testimony of the executor that the landlord wrote in wall and blind cleaning after the report was signed. Consequently, I find the executor has not agreed to an amount the landlord may retain from the security deposit and therefore find the landlord did not return the security deposit and has not filed an application to keep it within the allowable time frame.

I find that the tenant's executor of the estate has established a claim for the return of double the security deposit to the sum of **\$300.00** plus accrued on the original amount of **\$0.38** pursuant to section 38(6)(b) of the *Act*.

As the claim has merit I find the estate of the tenant is also entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the decision for the executor of the tenants estate will be accompanied by a Monetary Order for **\$488.38** pursuant to s. 67, s. 38(6)(b) and s. 72(1) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: March 29, 2016

Residential Tenancy Branch