



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0957182 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, O, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit, other, and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the Application for Dispute that the Tenant is attempting to recover \$3,600.00 for ending the tenancy prematurely, and that matter will be considered at these proceedings.

The Tenant stated that on September 07, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for the proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Is the Tenant entitled to \$3,600.00 as a result of an agreement to end the tenancy?

Background and Evidence:

The Landlord and the Tenant agree that:

- the parties signed a fixed term tenancy agreement, the fixed term of which began on February 15, 2015 and ended on February 15, 2017;
- the Tenant agreed to pay monthly rent of \$1,800.00;
- the Tenant paid a security deposit of \$900.00;
- a condition inspection report was completed at the beginning and the end of the tenancy;
- the parties signed a mutual agreement that ended the tenancy on August 15, 2016;

- the Landlord agreed to pay the Tenant \$3,600.00 in exchange for agreeing to end the fixed term of the tenancy prematurely;
- the Landlord wanted to end the fixed term prematurely because he had sold the rental unit;
- the Landlord gave the Tenant a cheque for \$3,600.00 in accordance with their agreement to end the tenancy;
- the rental unit was vacated on August 15, 2016;
- after the rental unit was vacated the Landlord put a stop payment order on the \$3,600.00 as he believed there were deficiencies with the rental unit;
- the Tenant did not provide the Landlord with a forwarding address, in writing, until the Landlord was served with the Application for Dispute Resolution;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord has not filed an Application for Dispute Resolution claiming against the security deposit.

Analysis:

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

I find that it would be inappropriate and unfair to conclude that the Tenant has provided the Landlord with a forwarding address in writing when the Tenant only provided the address when the Landlord was served with the Application for Dispute Resolution. I find that the legislation contemplates that the forwarding address be provided, in writing, prior to a tenant filing an Application for Dispute Resolution. I find it would be unfair to the Landlord to conclude differently, as the Landlord may be led to believe that it is too late for the Landlord to make a claim against the deposit because the matter is already scheduled to be adjudicated.

As the Tenant did not provide the Landlord with a forwarding address prior to filing an Application for Dispute Resolution, I dismiss the application to recover the security deposit. The Tenant retains the right to provide the Landlord with a forwarding address, in writing, in a manner than complies with section 88 of the *Act*. Pursuant to section 39 of the *Act*, the Tenant has until one year after the end of the tenancy to provide the forwarding address.

The Tenant retains the right to file another application to recover the security deposit if the Landlord does not return the security deposit or claim against the deposit after being provided with the forwarding address, in writing, in a manner than complies with sections 39 and 88 of the *Act*.

On the basis of the undisputed evidence I find that the Landlord and the Tenant added a term to their tenancy agreement which required the Landlord to pay \$3,600.00 to the Tenant in exchange for the Tenant signing a mutual agreement to end the tenancy prior to the fixed term of their tenancy agreement. As the parties agreed to this term of the tenancy agreement, I find that the Landlord was obligated to comply with it. On the basis of the undisputed evidence that the Tenant has not received this \$3,600.00 payment, I find that the Landlord must pay the Tenant \$3,600.00.

As there is no evidence that the \$3,600.00 payment was contingent on the rental unit being left in good condition, I find that the Landlord is obligated to pay this amount even if there were deficiencies with the rental unit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$3,700.00, which includes \$3,600.00 for ending the tenancy early and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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.

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 05, 2017

Residential Tenancy Branch

