



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 KOOTENAY HOMES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on July 7, 2017 for the return of the Tenant's security deposit and to recover the filing fee from the Landlord.

An agent for the Tenant appeared for the hearing to provide submissions on behalf of the Tenant. The agent confirmed that he was not a respondent to the Application, which was hereby amended to remove the agent's name pursuant to Section 64(3) (c) of the *Residential Tenancy Act* (the "Act").

There was no appearance for the Landlord during the 20 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The agent explained that the Tenant had served the named Landlord with the Application and notice of this hearing by registered mail on July 12, 2017. The company Landlord was served to their business address on August 21, 2017. The agent provided the Canada Post tracking numbers into evidence to verify this method of service. These numbers are detailed on the front page of this Decision.

The agent explained that the Canada Post website shows that the documents were received and signed for by the Landlords on July 12, 2017 and August 21, 2017 respectively.

Based on the undisputed evidence before me, I find the Tenant completed service of the required documents pursuant to Section 89(1) (c) of the Act. The hearing continued in the absence of the Landlord as follows.

Issue(s) to be Decided

Is the Tenant entitled to the return of his security deposit?

Background and Evidence

The agent explained that the Tenant entered into an oral tenancy agreement with the Landlords to start in September 2016. Rent was payable by the Tenant in the amount of \$500.00 on the first day of each month. The Tenant paid a security deposit of \$250.00 which the Landlord still retains in trust.

The agent explained that the tenancy ended on May 1, 2017 after the Tenant had provided written notice. Prior to this, the Tenant had provided the Landlord with a forwarding address in writing. The agent referred me to a letter that was dated April 28, 2017 but explained that the date was incorrect and that it should have read March 28, 2017. The agent confirmed that the Tenant had not given any permission for the Landlord to keep his security deposit and now claims for double the return of it.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on May 1, 2017 through the Tenant's written notice. I also accept the undisputed evidence that the Tenant provided the Landlord with a forwarding address on March 28, 2017 in the form of a written letter.

Therefore, the Landlord would have had 15 days from May 1, 2017 onwards, which was the end date of the tenancy, to deal properly with the Tenant's security deposit pursuant to the Act. There is no evidence before me that the Landlord made an Application within 15 days of the tenancy ending or obtained written consent from the Tenant to withhold it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) 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 was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of his security deposit in the amount of \$500.00.

As the Tenant has been successful in his Application, I also grant the \$100.00 filing fee pursuant to Section 72(1) of the Act. As a result, the Tenant is issued with a Monetary Order for a total amount of \$600.00.

This order must be served on the Landlord and may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. Copies of the order are attached to the Tenant's copy of this Decision. The Landlord may also be held liable for any enforcement costs incurred by the Tenant.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is granted a Monetary Order for \$600.00 which comprises double the security deposit and the Tenant's 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 Act.

Dated: December 04, 2017

Residential Tenancy Branch