



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, OLC, FF*

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and for an order directing the landlord to comply with the *Act*.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on August 28, 2017. The tenant provided a tracking number and a copy of the tracking history which indicates that the package was picked up and signed for on August 29, 2017.

Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

At the start of the hearing the tenant requested that his application be amended to include the recovery of the filing fee.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenant testified that the tenancy began on October 01, 2015 and ended in July 01, 2017. The monthly rent was \$2,000.00. Prior to moving in, the tenant paid a security deposit of \$2,000.00. The tenant provided proof of an e-transfer made out to the landlord on September 16, 2017, in the amount of \$2,000.00.

The tenant stated that all communication with the landlord was by email. The landlord sent the tenant a copy of the tenancy agreement by email but one was never signed by the parties. The tenant stated that he moved to the lower mainland from the Island and he booked this rental unit without looking at it.

The tenant testified that the landlord insisted on taking a full month's rent as a deposit and in order to hold the rental unit, the tenant paid \$2,000.00 for a security deposit.

The tenant also testified that the landlord had informed him by email, before the start of tenancy, that the rent would be \$2,000.00 for the first 12 months and would increase to \$2,100.00 from the 13th month on. The tenant stated that he made all payments to the landlord by e-transfer. The tenant agreed that he paid \$2,000.00 as rent for the entire term of the tenancy.

On June 30, 2017, the landlord agreed to return \$1,000.00 of the deposit and informed the tenant that she would check her records to confirm that the tenant had given proper notice to end the tenancy, and if so she would return the balance to the tenant. The landlord returned \$1,000.00 on July 14, 2017 by e-transfer, but failed to return the balance.

The tenant contacted the landlord by email and she responded to him saying that he had not paid the \$100.00 rent increase after the first 12 months and that she was keeping the balance of the deposit to cover unpaid rent.

The tenant made this application on for the return of \$1,000.00 on August 14, 2017.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, I find that the parties made all financial transactions by email and etransfer. Accordingly, the landlord had the email contact for the tenant and used it to repay \$1,000.00 of the deposit. The tenant did not agree to allow the landlord to retain the balance of the deposit and therefore the landlord was required to make an application for dispute resolution within 15 days of the end of tenancy.

As of August 14, 2017, the landlord had not made application for dispute resolution and had also failed to repay the balance of the security deposit and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the base amount of the security deposit.

The landlord collected a deposit of \$2,000.00 from the tenant and is obligated under section 38 to return double this amount (\$4,000.00). Since the tenant has proven his claim, he is also entitled to the recovery of the filing fee (\$100.00).

Overall the tenant has established a claim of \$4,100.00. Since the tenant has already received \$1,000.00, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the balance of **\$3,100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order for **\$3,100.00**.

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 13, 2017

Residential Tenancy Branch