



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The tenant, K.H. attended the hearing via conference call and provided affirmed testimony. The tenant, A.B. did not attend. The landlord attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence. The tenant, A.B. was unrepresented for the hearing. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset in reviewing the tenants' application for dispute it was uncertain what was being requested. The landlord provided undisputed affirmed testimony that his understanding was that the tenant was seeking a monetary order for return of the security deposit and the cost of a locksmith for changing the locks. The tenant confirmed the landlord's understanding of the application for dispute and has also stated that he is withdrawing his request for recovery of the locksmith charges. As such, this hearing shall proceed on the basis that the tenants seek a monetary claim for return of the security deposit.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Neither party provided any particulars of the tenancy agreement, but agreed that a \$455.00 security deposit was paid. Both parties also agreed that the tenancy ended on December 15, 2017 and that the tenants provided their forwarding address in writing to the landlord for return of the security deposit on January 2, 2018. The landlord stated that he did not have permission to retain the security deposit from neither the tenants nor the Residential Tenancy Branch.

At the conclusion of the hearing the landlord also claimed that he and the tenants were roommates and were not subject to the Act. I interpreted this as a claim that the landlord was challenging the Residential Tenancy Branch's jurisdiction in this manner. The landlord stated that they were roommate(s) which was confirmed by the tenant. The landlord confirmed that rent was paid to him from the tenants, but that he was not the owner of the rental unit.

Analysis

Section 4 (c) of the Residential Tenancy Act states in part that this Act does not apply to living accommodations in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Neither party submitted any particulars on whether bathroom or kitchen facilities were shared however, the landlord confirmed in his direct testimony that he was not the owner of the rental property. As such, the landlord's claim for jurisdiction is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the undisputed affirmed evidence of both parties and find that the tenants paid a \$455.00 security deposit to the landlord. The tenancy ended on December 15, 2017 and that the landlord received the tenants' forwarding address in writing for return of the \$455.00 security deposit on January 2, 2018. The landlord confirmed in his direct testimony that he did not receive permission from the tenants nor an order for the Residential Tenancy Branch to retain the security deposit. As such, the tenants are entitled to return of the original \$455.00 security deposit under section 38 (1) of the Act.

I also find based upon the undisputed affirmed evidence of both parties that the landlord failed to comply with section 38 (1) of the Act and has failed to return the \$455.00 security deposit and is required to pay the tenant a monetary award equal to the \$455.00 security deposit under section 38 (6).

The tenants have established a monetary claim of \$910.00.

Conclusion

The tenants are granted a monetary order for \$910.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: February 23, 2018

Residential Tenancy Branch