



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODSMERE PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Preliminary matter

At the start of the conference call the Tenant's Advocate said the Tenant has also applied for the Landlord's claims against the Tenant to be dropped. The Landlord said they have not made a formal application to date but will be in the future. The Arbitrator said this application is for the return of double the security deposit and the filing fee and any claims by the Landlord will be dealt with in the Landlord's application if the Landlord makes an application.

Further the Tenant had a number of witnesses that phoned into the hearing. Their phone numbers were taken and they were told that if their testimony was required they would be phone and their testimony would be heard. During the hearing it became apparent that the issues being heard did not require the testimony of the witnesses. Therefore no witness testimony was heard.

Introduction

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on December 28, 2017. The Tenant submitted a witnessed Proof of Service for the documents in the evidence package and the Landlord confirmed receiving the hearing package. Based on the evidence, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on November 1, 2016 as a one year fixed term tenancy with an expiry date of the last day of October 2017. The tenancy ended September 30, 2017. Rent was \$850.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$450.00 at the start of the tenancy. Condition inspection reports were completed at the start of the tenancy on October 28, 2016 and at the end of the tenancy September 30, 2017.

The Tenant said that she moved out of the rental unit on September 30, 2017 and gave the Landlord her forwarding address in writing on December 15, 2017. The Tenant continued to say that she asked the Landlord for her security deposit back but the Landlord has not returned it.

The Tenant's Advocate said the Tenant is requesting double her security deposit in the amount of $\$450.00 \times 2 = \900.00 plus the filing fee of \$100.00. The Advocate said the Tenant is requesting a total claim of \$1,000.00.

The Landlord said the tenancy ended before the expiry date of the fixed term and there were damages to the rental unit. Therefore the Landlord's employee deducted the Tenant's security deposit from the amount the Landlord's employee believed the Tenant owes for unpaid rent and for damages. Consequently the Landlord said they did not return the Tenant's security deposit as they believed the security deposit was used for unpaid rent and damages. The Landlord said he is not disputing the Tenant's claim for double the security deposit but he wanted to explain what happened. The Landlord continued to say he will be making an application for unpaid rent, a claw back of the rent incentive and for damages.

Neither party had any closing remarks.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on December 15, 2017. The Landlord did not dispute receiving a forwarding address from the Tenant. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by December 30, 2017. Consequently I find for the Tenant and grant an order for double the security deposit of \$450.00 in the amount of $\$450.00 \times 2 = \900.00 .

As the Tenant was successful in this matter, I also order the Tenant to recover the filing fee of \$100.00 from the Landlord. Pursuant to section 38, 67 and 72 of the Act a monetary order for \$1,000.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$900.00 and the \$100.00 filing fee.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$1,000.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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 12, 2018

Residential Tenancy Branch