



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on November 8, 2018 wherein the Tenant sought the sum of \$600.00 from the Landlord including return of double his security deposit paid, compensation for harassment, travel time and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on March 4, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Initially the Landlord alleged she did not receive any documents from the Tenant. In response the Tenant testified that he provided his evidence to the Landlords by registered mail and provided the tracking number for the package (which is reordereed on the unpublished cover page of this my Decision). The tracking information confirmed that this package was delivered to the Landlords on November 27, 2018. When I informed the Landlord of this, she then stated she only received the Tenant's Application and not his evidence.

I accept the Tenant's testimony that he delivered his evidence to the Landlord with his Application for Dispute Resolution and Notice of Hearing. I found the Tenant's testimony to be consistent in this regard, as opposed to the inconsistent testimony of the Landlord. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant applied for dispute resolution under the *Manufactured Home Park Tenancy Act*; tenancies under this *Act* include tenancies where the Tenant owns their manufactured home and rents a manufactured home site from the Landlord.

Although the rental unit in the case before me was a manufactured home, the Landlords owned the manufactured home such that the tenancy was more properly created under the *Residential Tenancy Act* (the “*Act*”).

Pursuant to section 64(3)(c) of the *Act*, I amend the Tenant’s application to be brought under the *Residential Tenancy Act*.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlords?
2. What should happen with the Tenant’s security deposit?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that he paid a \$200.00 security deposit. He further testified that he did not move into the rental unit as planned as the unit was not fit for occupation. The Tenant provided photos of the rental unit showing its condition.

The Tenant testified that he provided his forwarding address to the Landlords by letter dated October 23, 2018 (a copy of which was provided in evidence). He stated that on October 23, 2018, he gave the Landlords the letter, as well as keys to the rental unit, and photos of the rental unit, all of which were placed in a large envelope.

The Tenant sought the sum of \$400.00 representing double the security deposit paid. He also sought \$100.00 for the filing fee and an additional \$100.00 for what he characterized as harassment and travel costs (gas and mileage). The Tenant claimed that the Landlords threatened him and swore at him when he told them he was not going to move into the rental unit.

In response to the Tenant’s claims the Landlord, S.B., testified that the Tenant did not pay the full amount of the deposit, did not pay rent, and damaged the rental unit. She stated that on October 20, 2018 he saw the rental unit and was to return on October 29, 2018 and pay the balance owing for the security deposit and the rent; despite this assurance he did not.

The Landlord confirmed that they filed evidence in response to the Tenant's claim but did not make their own application for dispute resolution. She claimed that "someone at Service B.C." instructed her not to make her application.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

The Tenant applies for return of his security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) 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 find that the Tenant paid a \$200.00 security deposit. I also find that the Landlords received the Tenant's forwarding address on October 23, 2018 the date the Tenant provided the Landlords with his hand written letter, the keys to the rental unit and photos of the rental unit.

The Landlords failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlords. The Landlords may only keep all (or a portion) of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenant, the Landlords must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$400.00**, comprised of double the security deposit (2 x \$200.00).

During the hearing the Tenant was informed that travel costs such as gas and mileage are not recoverable under the *Residential Tenancy Act*. As such, those claims are dismissed.

In addition, I find the Tenant provided insufficient evidence, testimony and submissions to support his “harassment claim” as well providing me with any evidence to support a finding that he suffered a financial loss. The Tenant’s claim for related compensation is also dismissed.

The Tenant has been substantially successful in his application and is therefore entitled to recover the \$100.00 filing fee for a total of **\$500.00** awarded.

While not specifically before me, the parties are reminded that they may not contract out of the *Residential Tenancy Act*. Some of the provisions contained in the tenancy agreement filed in evidence, such as those prohibiting roommates, and the automatic vacating of the rental unit in the event of any breach of the tenancy agreement, are not enforceable.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of **\$500.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 13, 2019

Residential Tenancy Branch