



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP

Preliminary matter

At the start of the hearing the Arbitrator asked the parties to explain the tenancy to determine if this was a shared tenancy or a sublease. The Tenant explained the tenancy was a 6 month sublease from the Landlord. The Landlord confirmed the tenancy was a sublease while she was out of the country.

During the hearing the Tenant withdrew her claim of \$2,000.00 for loss of quiet enjoyment and pain and suffering. The Tenant said she would continue with her claim for the return of her security deposit.

Introduction

This matter dealt with an application by the Tenant for the return of the security deposit.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 27, 2019. Based on the evidence of the Tenant, 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 the Landlord and the Tenant in attendance.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on November 1, 2018 as a fixed term tenancy with an expiry date of May 1, 2019. Rent was \$800.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy. No move in condition inspection report was completed and signed at the start of the tenancy. The Tenant ended on April 1, 2019 and a move out condition inspection report was completed and signed on April 1, 2019.

The Tenant said the Landlord came back from out of the country early and wanted to move back into the rental unit during March 2019. The Tenant said the Landlord did move in for 3 or 4 days and then stayed with a friend until the Tenant moved out on April 1, 2019. The Tenant said she gave the Landlord her written forwarding address on April 16, 2019 and the Landlord has not returned her deposit or made an application to retain the security deposit. The Tenant said she is requesting the return of her security deposit in the amount of \$400.00.

The Landlord said she received the Tenant's forwarding address on April 16, 2019. The Landlord said she received the Tenant's application on April 27, 2019 so she believed that she did not have to make an application to retain the Tenant's security deposit. The Landlord believed that the Tenant's application would handle both the Tenant's claims and the Landlord's claims regarding the security deposit.

The Landlord continued to say that she has the Tenant's security deposit in the amount of \$400.00 and she kept it because the Tenant had an additional unauthorized person living in the rental unit for part of the tenancy. The Landlord said she kept the deposit as extra rent payment for the extra person.

The Tenant said in closing that all she wants is her deposit back and she is withdrawing the damage claim for \$2,000.00.

The Landlord said in closing that she understands that she can make an application for compensation for the extra tenant if she wants to.

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 find that the Tenant gave the Landlord her forwarding address in writing on April 16, 2019. 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. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$400.00 in the amount of $\$400.00 \times 2 = \800.00 .

A monetary order for \$800.00 will be issued to the Tenant.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$800.00 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: June 03, 2019

Residential Tenancy Branch