



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF, O

Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery November 25, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package later than the requirements of s. 89 of the Act. The Landlord said she wanted to go ahead with the hearing and that she had received the package with time enough to prepare for the hearing. The hearing proceeded with both the Landlord and the Tenant in attendance.

The Tenant said that she was withdrawing the application to recover the filing fee as the fee had been waived for her application.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on December 15, 2009 as a month to month tenancy. The tenancy ended on either July 16, 2010 as the Tenant recalls it or July 18, 2010 as the Landlord recalls it. Rent was \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 on November 30, 2009.

The Tenant said that she moved out of the rental unit on July 16, 2010 and gave the Landlord a forwarding address in writing on July 24, 2010. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that she cleaned the unit before leaving and she asked the Landlord for her deposit back. She said the Landlord said there was damages to the floors and the carpet needed replacing so the Landlord said he would not give her the security deposit back. The Tenant said she submitted a copy of the written forwarding address that she gave in person to the male Landlord and the copy is witnessed. The written forwarding address is dated July 24, 2010.

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The Tenant also said she had made a claim for \$45.00 which represented 2 days of utilities that she thought she was charged for. The Tenant said she would withdraw the claim as she had no proof to establish the amount of the claim.

The Landlord said that the unit was not cleaned and there was damage to the floors which they had to repair and replace when the Tenant moved out. The Landlord said this was the reason why they did not give the security deposit back to the Tenant. The Landlord said that her husband may have received the Tenant's written forwarding address on July 24, 2010, but she did not know. The Landlord said that they did not apply to the Residential Tenancy Branch for an order to retain part or all of the Tenant's security deposit for any damages or for cleaning the unit.

The Tenant said she cleaned the unit before she left and she tried on a number of occasions to meet with the Landlord to conduct a move out inspection, but the Landlord did not cooperate and as a result no move out inspection was done.

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



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

I find from that the Tenant did give the Landlord a forwarding address in writing on July 24, 2010. 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 grant an order for double the security deposit of \$300.00 in the amount of $\$300.00 \times 2 = \600.00 .

As the Tenant was successful in this matter, pursuant to section 38 and 67 a monetary order for \$600.00 has been issued to the Tenant. This Monetary Order represents double the security deposit in the amount of \$600.00.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$600.00 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: January 10, 2011.

Residential Tenancy Branch