



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

At the outset of the hearing the Agent for the Landlord stated that he should not be named as the Respondent, as the Landlord is a limited company. Both parties agreed that the Application for Dispute Resolution should be amended to correctly identify the Landlord and the Application for Dispute Resolution has been amended accordingly.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2009; that the Tenant paid a security deposit of \$515.00; that the tenancy ended on October 31, 2011; that the Tenant provided the Landlord with a forwarding address, in writing, on October 31, 2011; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord and the Tenant agree that a condition inspection report was completed shortly after the start of the tenancy and that a condition inspection report was completed on October 31, 2011, a copy of which was submitted in evidence. The Tenant signed the report when the unit was inspected on October 31, 2011 in the area designated to show that the Tenant he agrees the report fairly represents the condition of the rental unit. The Tenant also signed the report when the unit was inspected on October 31, 2011 in the area designated to show that the Tenant agrees to the deductions outlined in this area.

The Tenant stated that when he signed the report the only notation in the area designated to show that the Tenant agrees to deductions was blank, with the exception of a notation that he had paid a security deposit of \$515.00. He contends that the \$515.00 deduction for liquidated damages was made after he signed the report.

The Agent for the Landlord stated that he was not present on October 31, 2011 when the aforementioned Condition Inspection Report was signed. The Landlord submitted an affidavit from the agent for the Landlord who was present when this report was signed. In her affidavit the agent for the Landlord declared that the \$515.00 deduction for liquidated damages was made after the Tenant signed the report and after the Tenant had left. In her affidavit the agent for the Landlord declared that she did inform the Tenant that he may lose all or some of his deposit because of the late notice to end the tenancy but that she would not know the exact amount that would be deducted until she spoke with her employer.

The Landlord and the Tenant agree that the tenancy agreement, which was submitted in evidence contains a liquidated damages clause, which specifies that the tenant will pay liquidated damages, in no specified amount, if the tenant ends the fixed term tenancy before the end of the original term.

The Landlord and the Tenant agree that term 43 of the tenancy agreement stipulates that the liquidated damages clause is also in effect if the Tenant gives less than one full month's notice to end the tenancy.

Analysis

Section 38(4) of the *Residential Tenancy Act (Act)* stipulates that a landlord may retain an amount from a security deposit or pet damage deposit at the end of a tenancy if the tenant agrees, in writing, that the landlord may retain the amount to pay a liability or obligation of the tenant.

In these circumstances, I find that the Landlord did not have written authorization to retain any portion of the Tenant's security deposit. On the basis of the undisputed evidence presented at the hearing, when the Tenant signed the Condition Inspection Report on October 31, 2011 he did not agree, in writing, that the Landlord could retain any portion of his security deposit. On the basis of the undisputed evidence presented at the hearing, I find that an agent for the Landlord amended the Condition Inspection

Report to show that the Tenant was agreeing to a deduction of \$515.00, without the consent of the Tenant. As this document was amended without the consent of the Tenant, I find it does not constitute written permission to retain any portion of the security deposit.

As no other evidence was submitted to show that the Tenant gave the Landlord written permission to retain the security deposit, I find that the Landlord did not have written authority to retain any portion of the deposit. As the Landlord did not have written permission to keep the Tenant's security deposit, I find that the Landlord was obligated to comply with section 38(1) of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

I specifically note that I have made no determination on whether the Landlord is entitled to liquidated damages or any other compensation arising from this tenancy, as the Landlord has not made an application for compensation.

Conclusion

I find that the Tenant has established a monetary claim of \$1,080.00, which is comprised of double the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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 06, 2012.

Residential Tenancy Branch