



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

The tenant testified that when she vacated the rental unit there had been a verbal agreement whereby the landlord would contact the property owner to discuss repair of a stair railing post that the tenant's cat had damaged. The tenant stated that she provided the landlord with her forwarding address in writing on December 10, 2011. The tenant stated that when she did not hear back from the landlord she contacted him by text message and was informed that she could pick up the \$28.00 balance that was being returned to the tenant from the \$150.00 security deposit.

The landlord testified that when the tenant vacated the rental unit there was an outstanding utility bill in the amount of \$47.48 and the tenant did not provide proper notice to vacate per the Act and the landlord had retained the majority of the security deposit for these reasons.

The tenant acknowledged that there was an outstanding utility bill in the amount of \$47.48 and agreed to have this amount deducted from any monetary award.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing; the landlord in this case had done neither.

Per section 38 (4)(a) there is also not a written agreement between the landlord and tenant whereby the tenant has authorized the landlord to keep a portion of the security deposit for damages or other expenses associated with this tenancy.

It should also be noted that the tenancy agreement that is in place for this tenancy has numerous clauses that are considered "*unconscionable*" per section 3 of the Residential Tenancy Regulations and are therefore NOT enforceable. In particular the sections related to Damage Deposits, Rent, Bill Payment and Evictions include terms that do not comply with the Act.

Residential Tenancy Regulations **3 Definition of "unconscionable"**

For the purposes of section 6 (3) (b) of the Act [unenforceable term], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit. Accordingly I find that the tenant is entitled to a monetary order for \$300.00.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for \$300.00 in return of double the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$350.00**.

If the amount is not paid by the landlord(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 14, 2012

Residential Tenancy Branch