



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Tenant and her witness gave affirmed testimony at the Hearing.

The Tenant's witness testified that he served the Landlord AL with the Notice of Hearing documents by handing the documents to her at her residence on March 9, 2012. He testified that he also served the corporate Landlord by leaving the documents at the place the corporate Landlord does business on March 9, 2012.

Based on the affirmed testimony of the Tenant's witness, I am satisfied that both Landlords were served with the Notice of Hearing documents in accordance with the provisions of Section 89 of the Act. Despite being served, neither Landlord signed into the conference and the Hearing continued in their absence.

Issues to be Decided

- Is the Tenant entitled to a monetary order pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant testified that she had filed an Application for return of the security deposit before this Application and that Hearing took place on February 14, 2012. A copy of the February 14, 2012, Decision was provided in evidence. The dispute resolution officer found that the Tenant's Application was premature and gave her leave to reapply for return of the security deposit.

The Tenant's witness testified that he gave the Landlords the Tenant's forwarding address in writing on February 14, 2012, at the business and at the residence of the Landlords. The Tenant provided a copy of the February 14th letter in evidence.

The Tenant provided a copy of the tenancy agreement in evidence. The Tenant testified that she paid a deposit in the amount of \$1,000.00 on August 23, 2011, which the Landlords referred to as "last month's rent". The Tenant moved out of the rental unit on January 2, 2012.

The Tenant testified that there were no Condition Inspection Reports completed at the beginning or the end of the tenancy. She stated that she did not give the Landlords permission to retain any of the deposit and that none of it has been returned.

Analysis

Section 5 of the Residential Tenancy Act (the "Act") provides that landlords and tenants may not avoid or contract outside the Act and that any attempt to do so is of no effect. The Act does not allow for prepayment of the "last month's rent" and therefore I find that the \$1,000.00 paid by the Tenant on August 23, 2011, was a security deposit and the provisions of Section 38 of the Act apply.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, based on the undisputed affirmed testimony of the Tenant, I find that the Tenant provided her forwarding address in writing on February 14, 2012. The Landlords had made application for dispute resolution claiming against the security deposit, but that application was dismissed without leave to reapply on February 14, 2012. I accept the Tenant's testimony that the Landlord did not return the \$1,000.00 security deposit to her within 15 days of receipt of her forwarding address and therefore I find that the Tenant is entitled to double the security deposit, in accordance with the provisions of Section 38(6) of the Act.

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the filing fee from the Landlords.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$2,050.00** for service

upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 15, 2012.

Residential Tenancy Branch