



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of his security deposit in double the amount and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the evidence was discussed and neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order equal to his security deposit, doubled, and to recover the filing fee?

Background and Evidence

This tenancy began on May 1, 2012, ended on May 15, 2012, monthly rent was \$600.00 and the tenant paid a security deposit of \$300.00 on or about May 1, 2012.

The tenant's monetary claim is \$600.00, representing his security deposit of \$300.00, doubled.

The tenant submitted that he rented a den from the landlord, who in turn was renting a rental unit from his landlord; however the landlord did not receive permission from his landlord to rent the den. Due to this, the tenant, who had signed a 1 year lease, was forced by the building manager to move out mid May, during the first month of the tenancy.

The tenant said that the landlord promised the tenant he would return the rent for May, which he did in the form of a cheque. However, according to the tenant, the landlord informed him one day in a coffee shop that he, the landlord, would not return his security deposit, despite providing the landlord his written forwarding address on May 15, 2012.

The tenant's relevant evidence included a letter, dated May 16, 2012, providing the tenant's written forwarding address, a receipt showing payment from the tenant to the landlord for \$600.00 for May 2012 rent and \$300.00 security deposit, dated May 1, 2012 and a copy of the cheque, for \$600.00, from the landlord to the tenant.

In response, the landlord said that he wrote a cheque for \$600.00 to the tenant, representing a reimbursement of rent for May 16-31, and a return of the security deposit of \$300.00. The landlord denied agreeing to return the full rent for May as the tenant had stayed there for one half of the month and was not entitled to free accommodations.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I accept that the tenant paid a security deposit of \$300.00 on May 1, 2012 and that the landlord issued a cheque in the amount of \$600.00 after the tenancy ended on May 15. The parties disputed for what the amount was intended to include. The tenant stated that the landlord promised to return the rent for May as the landlord illegally rented him the den and he had to vacate only 15 days into a 1 year tenancy agreement after the building manager told him to leave.

The landlord said that he never agreed to let the tenant stay there rent-free, and that the \$600.00 was for reimbursement for the second half of May and the security deposit return.

Despite the disputed verbal testimony, the tenant's evidence, a copy of the \$600.00 cheque signed by the landlord, clearly shows the landlord's notation on the memo line as follows: "Rent return May 2012."

I find the tenant's undisputed documentary evidence supports the tenant's version of events and I find on a balance of probabilities that the landlord agreed to reimburse the tenant for the month of May and therefore by his actions, he agreed to waive the tenant's obligation to pay rent for the half month of occupancy, May 1-15. I accept the cheque written by the landlord to the tenant was that reimbursement and that the security deposit was not included.

Due to this, I find the landlord has not returned the tenant's security deposit.

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on May 15, 2012, and the landlord received the tenant's forwarding address in writing on or about May 16, 2012. I find the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for double recovery of his security deposit of \$300.00, in the amount of \$600.00.

I also allow the tenant to recover the filing fee of \$50.00.

Conclusion

I find the tenant has established a monetary claim of \$650.00, comprised of his security deposit of \$300.00, doubled, and the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$650.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: August 13, 2012.

Residential Tenancy Branch