



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?

Background and Evidence

The tenancy began on October 1, 2011 at which time a security deposit of \$1,050.00 was paid. Current rent was \$2,100.00 per month. The tenancy ended at the end of October 2012. The parties both testified that the tenant had given the landlord a written forwarding address at the end of the tenancy.

The tenant testified that the landlord kept the tenant's security deposit without written permission to do so and without obtaining an order under the Act permitting the landlord to retain any portion of the deposit. Based on the landlord's violation of the Act, the tenant is requesting the return of double the security deposit.

The landlord acknowledged that the deposit was paid and was not returned to the tenant after the end of the tenancy. The landlord stated that she did not fully understand the obligations under the Act requiring the landlord to return the security deposit within 15 days. The landlord stated that the tenant had taken advantage of her lack of knowledge and of her medical condition. The landlord testified that the tenants left the rental unit in an unclean damaged condition and the landlord has made her own

application for dispute resolution, to seek compensation. The landlord's application is not before me today and, according to the landlord, is scheduled to be heard on March 3, 2013.

Analysis :

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission to do so, at the end of the tenancy. A landlord may also retain the security deposit if the landlord has successfully obtained a monetary order through dispute resolution permitting the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

The Act states that, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address is received, whichever is later.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give written permission to the landlord allowing the landlord to keep the deposit. I also find that the landlord did not make an application to obtain an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's own claim for damages and loss caused by the tenant, I find that I am unable to consider the landlord's evidence of damage to the suite submitted for this hearing because the hearing today as convened solely to deal with the *tenant's* application under section 38 of the Act and no cross application from the landlord was before me.

I find that under section 38, the tenant is entitled to total compensation of \$2,150.00 comprised of \$2,100.00, which is double the security deposit of \$1,050.00 and the \$50.00 cost of the application.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for \$2,150.00. This order must be served on the respondent landlord and may be filed in B.C. Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and was granted a monetary order for a refund equivalent to double the security deposit.

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 14, 2013

Residential Tenancy Branch

