



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0916348 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, the interest and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on January 23, 2013. The landlord did not appear.

The tenant gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenancy began on October, 1, 2006. Current rent in the amount of \$665.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenant. The tenant stated that the tenancy ended as he had accepted a two month notice to end tenancy for landlord use of property and vacated the unit on December 31, 2012.

The tenant testified that he provided the landlord with a written notice of the forwarding address on December 31, 2012, when he returned the keys. The tenant stated he did not sign over any portion of the security deposit.

The tenant testified that the landlord did not perform neither incoming nor outgoing condition inspection reports.

The tenant testified that when he did not receive his security deposit by the middle of January 2013, he contact the landlord and was told that they were still waiting for the owner to send them the money, but they expected the money would arrive shortly. The tenant stated he did not receive his security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$710.26, comprised of double the security deposit (\$325.00) on the original amount held, the interest of \$10.26, and the \$50.00 fee for filing this Application.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial 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: April 15, 2013

Residential Tenancy Branch

