



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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

Preliminary Matters

The landlord confirmed receipt of the Notice of hearing package in early September; the landlord confirmed that the 2nd named respondent received the same hearing package.

The tenant submitted evidence to the landlord, sent via registered mail on October 10, 2013; the landlord said they did not receive that mail. The evidence was given to the Residential Tenancy Branch (RTB) on October 10, 2013.

On September 8, 2013 the landlord sent the tenant evidence via registered mail; the tenant confirmed receipt of that mail on October 10, 2013; she said she had not had sufficient time to review the evidence.

RTB rules of procedure require service of evidence to the RTB at least 5 days prior to a hearing. This does not include the day the evidence is submitted, the day of the hearing, statutory holidays or weekends. As each party submitted evidence to the RTB outside of the required time-frame, I determined that the evidence would be set aside. Each party was able to make oral submissions.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- The 1 year fixed-term tenancy commenced on March 1, 2012;
- Rent was \$950.00 per month, due on the 1st day of each month;
- Move –in and move-out condition inspection reports were not completed;
- A security deposit in the sum of \$500.00 was paid and then reduced to \$475.00 when the tenant agreed to a deduction for a NSF fee; and
- That on October 10, 2013 the tenant gave notice ending the tenancy and upon the agreement of the landlord, paid November rent and vacated at the end of October, 2012.

The landlord confirmed that she was given a cheque on October 31, 2012 that had the tenant's forwarding address included. The landlord used that address to send the tenant a letter in November 2012, which informed the tenant the landlord would be retaining the deposit. The tenant did not respond to that letter; she said the letter was not received.

The landlord confirmed that the address given on the October 31, 2013 cheque was the same address the tenant indicated as a service address on her August 28, 2013 application for dispute resolution. The landlord chose not to return the deposit as she wanted to wait for the hearing.

The tenant said that she had agreed to pay November 2012 rent, as her notice had been late; the tenancy then ended with the agreement of the landlord. The tenant paid November 2012 rent on October 31, 2012 and told the landlord that the address on the cheque was her forwarding address.

During the hearing the tenant agreed to allow deduction in the sum of \$189.50 for hydro costs owed to the landlord. This was the sum the landlord agrees is owed for hydro.

Analysis

In relation to the security deposit that was paid by the tenant, I have considered the Act and the impact the absence of condition inspection reports had on the deposit.

Section 23 of the Act requires a landlord to schedule and complete a move-in condition inspection with the tenant. A copy of the report must be signed and a copy given to the tenant. This did not occur.

Section 24 of the Act sets out consequences that result when the landlord fails to meet the requirement to schedule and complete the move-in condition inspection report. If a landlord fails to schedule and complete a report at the start of the tenancy the landlord's right to claim against the security deposit for damage to the unit is extinguished. The landlord has not submitted a claim against the security deposit.

Section 38(1) of the Act determines that the landlord must, within fifteen days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit.

Further, section 38 provides, in part:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

In this case the landlord did not have the tenant's written permission to retain the deposit and did not have an Order allowing the landlord to retain the deposit; in accordance with section 38(4) of the Act.

Therefore, I find that the landlord was given the tenant's written forwarding address on October 31, 2012, when the tenant provided the cheque and pointed out her forwarding address on that cheque. The landlord confirmed that the address as used to send some correspondence to the tenant in November 2012.

Therefore, once the landlord received the tenant's forwarding address, the landlord was required to return the deposit within fifteen days of October 31, 2012. Even though the landlord believed they had a claim against the tenant, the right to hold the deposit

against a claim for damage to the unit had been extinguished. If there had been a claim for unpaid rent or utilities, the landlord was required to make that claim within fifteen days of October 31, 2012. When the landlord failed to submit a claim or return the deposit in within fifteen days section 38(6) of the Act determines that the deposit must be doubled.

Therefore, I find that the landlord is holding a deposit in the sum of \$950.00; less \$189.50 the tenant agreed is owed for hydro costs.

I find that the tenant's application has merit, and that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

I find that the tenant has established a monetary claim, in the amount of \$1,000.00, which is comprised of double the \$475.00 security deposit and \$50.00 in compensation for the filing fee paid by the tenant for this application for dispute resolution. By agreement the sum owed to the tenant is reduced by \$189.50.

Based on these determinations I grant the tenant a monetary Order for \$810.50. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant is entitled to double the \$475.00 security deposit; less \$189.50 the tenant agreed is owed to the landlord for hydro costs.

The tenant agreed that the security deposit held in trust was \$475.00; not \$500.00.

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: October 16, 2013

Residential Tenancy Branch

