Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, 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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began in August 31, 2006 and a security deposit of $182.00 was paid. The current rent was $394.00 The tenancy ended on August 31, 2013. According to the landlord, the tenant's written forwarding address was sent to the landlord by registered mail on September 7, 2013.

The land lord acknowledged that the security deposit was not returned and that the tenant had never given the landlord written permission to keep any portion of the security deposit. The landlord testified that the tenant did not leave the unit in good repair and this was the reason that the tenant's security deposit was retained by the landlord.

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 at the end of the tenancy, or if
- the landlord has obtained an order through dispute resolution authorizing the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

Section 38 of the Act requires that the security deposit and pet damage deposit be refunded to the tenant within 15 days of the end of the tenancy and the date that the written forwarding address has been received, whichever is later.

However, if the landlord decides to make a claim against the tenant to keep the deposit for a debt or damages, then 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 was received.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently make an application seeking 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 testimony that the tenant owes the landlord monetary compensation for damages, I was not able to hear, nor consider any of the landlord's claims against the tenant during these proceedings because this hearing was convened to deal only with the *tenant's* application under section 38 of the Act and that was the only matter officially before me.

The landlord did not make a cross application. That being said, I find that the landlord is at liberty to make their own separate application to claim damages, pursuant to section 67 of the Act, if the landlord decides to do so.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the $182.00 security deposit in the amount of $364.00 plus $5.82 interest.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for $369.82 in favour of the tenant. This order must be served

on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and is granted a monetary order for an amount equivalent to double the security deposit under section 38(6) of the Act.

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: March 24, 2014

Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

Now that you have your decision…

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
  Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
  Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
  Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
  Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
  Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca