



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.

Preliminary Matters

The tenant served the landlord with Notice of the hearing, sent via registered mail. The tenant used only the street address and failed to include the landlord's suite number. The landlord owns the whole building, but said neither he nor his agent saw the mail. The returned mail was marked by Canada Post as unclaimed.

The landlord said it was not until he was at the Residential Tenancy Branch (RTB) office on May 12, 2014, that he became aware of the hearing. The landlord said he asked (RTB) staff if there were any upcoming hearings that he may not know about, as he owns many rental units and had recently received decisions for hearings he had not attended. The landlord was then provided with a copy of the Notice of hearing by a RTB staff member.

The landlord was asked if he was prepared to proceed or if he would prefer an adjournment so that he could make a written evidence submission. The landlord declined the offer of an adjournment; he did not wish to make any written submission, accepted he had been sufficiently served with notice of the hearing and that he understood the claim. The hearing then proceeded on oral testimony only; the tenant did not supply any written submissions.

The application indicated a monetary claim in the sum of \$1,050.00; this is an error as it indicated the sum of deposit paid, not the doubled portion.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid in the sum of \$1,050.00?

Is the tenant entitled to filing fee costs?

Background and Evidence

There was no dispute that the tenancy commenced 9 years ago. The tenant testified that a security deposit in the sum of \$1,050.00 was paid. Rent was \$2,100.00 per month. A tenancy agreement was signed; a copy was not submitted as evidence. The tenant said that after 9 years his copy of the tenancy agreement had been misplaced.

There was no dispute that a move-out condition inspection report was completed in January 2014 and that the tenant provided his written forwarding address on the inspection report. An agent for the landlord completed the report with the tenant.

The tenant said that he initially asked the landlord to return the security deposit. As the tenant could not locate the tenancy agreement or cancelled cheque the landlord refused to return the deposit. The landlord told the tenant if he could prove he paid a security deposit, it would be returned. The tenant attempted to obtain a copy of the security deposit payment cancelled cheque but, due to the passage of time, the bank was unable to assist. The tenant stated that his spouse works for a major bank and that they have been told the cheque is too dated.

The tenant testified that he did pay the security deposit and that the landlord requires tenants to do so.

The landlord responded that the tenant cannot locate a copy of the cheque as he never paid the security deposit. The landlord said the tenant has been told that if he could prove that a security deposit had been paid the landlord would immediately return any deposit. The landlord stated that the tenant has not been able to prove a deposit was in fact paid and that the tenancy agreement did not indicate a deposit had been paid.

The landlord said that he spends from November to March of each year in Florida and that his copy of the tenancy agreement is in Florida. The landlord said that the tenancy agreement would support his submission that a security deposit was not paid. The landlord said they used the standard Residential Tenancy Branch agreement form.

When asked if he would be willing to submit a copy of the tenancy agreement the landlord responded that he should not have to do that, as the tenant has the burden of proving the claim made. I explained that a copy of the tenancy agreement would only prove the landlord's submission and form a reasonable response to the claim. The landlord said there was no one in Florida who could supply a copy of the tenancy agreement on his behalf. The landlord took exception to my suggestion that a copy of the agreement should be supplied before this decision was issued; with an adjournment granted until his return to Florida in November of this year.

The tenant said that he suspects the new tenant of his unit would have paid a security deposit to the landlord. The landlord said he has many rental units and that he never asks tenants to pay a security deposit. When the tenant vacated his unit the new occupant was not asked not pay a deposit, but within a month she voluntarily provided the landlord with a security deposit.

The landlord said that after the tenancy ended the unit required repair and that he chose not to pursue the tenant for costs.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 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. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The tenant has the burden of proving his claim, to a degree that is believable. I must be satisfied, on the balance of probabilities that the tenant has established that a security deposit was in fact paid.

My assessment and finding is based on the evidence supplied by each party; through oral testimony. I have considered the evidence given by each party and weighed the credibility and likelihood of each submission.

On March 20, 2014 the tenant applied requesting return of the security deposit; the tenancy had ended. I find that by January 30, 2014, at the latest, the landlord had the tenant's written forwarding address given on the inspection report. This was not in dispute.

The landlord has a copy of the tenancy agreement but was what I found to be evasive, objecting to any suggestion that he could supply a copy of that document. The matter of payment could have been proven if the landlord were willing to submit the tenancy agreement.

The landlord said the agreement would indicate a security deposit had not been paid, but at the same time the landlord failed to take the opportunity for adjournment so he could produce a copy of that document, in support of his assertion. Rather, the landlord relied upon the fact the tenant could not produce a copy of the cancelled cheque or the tenancy agreement to show the security deposit had been paid.

I found the landlord's assertion that he never requests a security deposit from a tenant a significant departure from common business practice, particularly when, as the landlord said, he has many rental units. This submission caused me to question the veracity of the landlord's testimony. My confidence in the landlord's submission was further eroded when he stated that tenants voluntarily provide security deposit payment; when payment had not been requested. I found this, on the balance of probabilities, to be highly unlikely. The landlord brought forward no evidence to support his assertion that he never requests security deposits; such as copies of other agreements where payment of a security deposit was not required. This would have been a reasonable response to the claim.

It is not clear why the landlord would have the only copy of the tenancy agreement in Florida, rather than in Vancouver where his rental units are located and he carries out business, but the landlord clearly did not wish to offer a copy of that agreement. I found the landlord's reaction to my suggestion that a copy should be produced only further caused me to question the landlord's credibility.

I found the tenant's submission reliable and consistent. The tenant gave the landlord time to return the deposit, made a request it be returned and, when it was not, the application for dispute resolution was submitted. I find these are steps consistent with those required when a tenant wishes return of a security deposit that has been paid.

Therefore, on the balance of probabilities, I find that a security deposit in the sum of \$1,050.00 was paid at the start of this tenancy.

As the landlord was given the tenant's application no later than January 31, 2014 and failed to return the deposit or make a claim against the deposit within fifteen days of that date, I find pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the security deposit; \$2,100.00.

As the tenant's application has merit I find that the tenant is entitled to return of the \$50.00 filing fee.

Based on these determinations I grant the tenant a monetary Order in the sum of \$2,150.00. 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 return of double the security deposit.

The tenant is entitled to return of the filing fee cost.

This decision is final and binding and 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: July 14, 2014

Residential Tenancy Branch

