



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 27, 2014, by the Tenant to obtain a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. The parties gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that began on January 1, 2013. The Tenant was required to pay rent of \$1,100.00 on the first of each month and on or before January 1, 2013, the Tenant paid \$550.00 as the security deposit. The Tenant was served a 2 Month Notice to end tenancy as the Landlord had sold the property and was required to vacate the property by April 30, 2014. No move in or move out condition inspections were scheduled or completed.

The Tenant testified that he vacated the property on April 29, 2014, in accordance with the 2 Month Notice and did not pay rent for April 2014, as compensation for receipt of the Notice. He stated he provided the Landlord with his forwarding address on May 6, 2014 and had not received payment for the return of his security deposit.

The Landlord had submitted evidence that he had sent the Tenant a bank draft for \$300.00 which was included in the registered mail package sent to the Tenant with the Landlord's evidence. During the hearing the Tenant checked the envelope and found the \$300.00 bank draft.

The Landlord testified that the bank draft and evidence were mailed to the Tenant on September 2, 2014. He confirmed that he did not have the Tenant's permission in writing to keep the deposit; he did not have an order issued by the *Residential Tenancy Branch*; and he has not filed an application for dispute resolution to keep the deposit.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The evidence supports the tenancy ended April 30, 2014 the Tenant provided the Landlords with his forwarding address in writing on May 6, 2014. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than May 21, 2014. The Landlord waited until September 2, 2014 and then returned only \$300.00.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish his claim and I award him double his security deposit plus interest in the amount of **\$1,100.00** (2 x \$550.00 + \$0.00 interest).

The Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order for **\$850.00** (\$1,100.00 + \$50.00 LESS payment of \$300.00). This Order is legally binding and must be served upon the Tenant. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: October 03, 2014

Residential Tenancy Branch

