



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD, FF

Introduction

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the address noted on the Application, on August 19, 2008. A tracking number was provided. The Canada Post website shows the mail was not retrieved by the Landlord. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the return of double the security deposit paid in relation to this tenancy and if they are entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Tenant stated that this tenancy ended on July 16, 2008. The Tenant stated that the tenancy agreement required the Tenants to pay monthly rent of \$625.00. She stated that they paid a security deposit of \$312.50. She is not certain when the deposit was paid, but she is certain that it was paid on, or before, May 15, 2008, which is the day they moved into the rental unit.

The Tenant stated that she personally gave her forwarding address, in writing, to an agent for the landlord on July 16, 2008. The Tenant stated that she did not authorize the Landlord to retain all or part of the security deposit.

The Tenant stated that she contacted the agent for the landlord on August 07, 2008 to inquire about the return of the security deposit. She stated that the agent advised her that if she did not receive the cheque in the mail on August 08, 2008, that the landlord would cancel the original cheque and issue her a second cheque.

The Tenant stated that she received a cheque in the mail on August 11, 2008, in an envelope that was post marked August 08, 2008. The Tenant stated that she believed the cheque, which was in the amount of \$360.00, was to repay the security deposit and for a \$40.00 key deposit. She stated that she did not cash this cheque, as she believed that the cheque had been cancelled.

The Tenant stated she received a replacement cheque, in the amount of \$360.00, on August 14, 2008. She has cashed the replacement cheque.

Analysis

In the absence of evidence to the contrary, I find that the Tenants paid a security deposit of \$312.50 on, or about, May 15, 2008. I also find that they paid a key deposit, in the amount of \$40.00.

In the absence of evidence to the contrary, I find that the Landlord mailed a cheque, in the amount of \$360.00, to the Tenant on August 08, 2008. I find that \$40.00 of this payment was the return of the key deposit and \$312.50 was the return of her security deposit. In the absence of any other explanation, I presume that the remaining \$7.50 was interest on the deposits.

I find that the Landlord overpaid the interest due to the Tenant by \$5.36, as the interest payable was only \$2.14.

Section 38(1) of the *Act* provides that within 15 days after the later of the date the tenancy ends and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must either repay the security deposit to the Tenant or file an Application for Dispute Resolution claiming against the deposit. In the present case, I find that the Landlord was required to return \$312.50, plus interest on the security deposit, on or before July 31, 2008.

Section 38(6) of the *Act* stipulates, in part, that a Landlord must pay the Tenant double the amount of the security deposit if the Landlord fails to comply with section 38(1) of the *Act*. I find that the Landlord has not complied with section 38(1) of the *Act*, as he did not return the security deposit within the legislated time limit, and that he therefore must pay the Tenant double the amount of the security deposit.

I find that the Tenant's application has merit and that she is entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

I find that the Tenant has established a monetary claim of \$677.14, which is comprised

of double the security deposit, in the amount of \$625.00, plus interest on the original deposit in the amount of \$2.14, and \$50.00 in compensation for the cost of filing this Application. I find that this amount should be reduced by the \$320.00 that was returned to the Tenant on August 14, 2008. I am aware that the Landlord returned an additional \$40.00 on August 14, 2008, however that amount is not being factored into this settlement, as it does not relate to the security deposit.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$357.14. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the Court.

Date of Decision: October 09, 2008
