

DECISION AND REASONS

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for return of 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. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is is entitled to a monetary Order for return of the deposit paid and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, and 72 of the *Residential Tenancy Act (Act)*.

The tenant requested inclusion of additional monetary claims as part of this application. As the tenant has not included a claim in this application and has not filed an amended application I determine that additional monetary claims must be brought forward in a future application for dispute resolution so that the respondent may be properly served with notice of the application and evidence.

Background and Evidence

The tenancy commenced on September 1, 2008 and terminated on April 27, 2009. The Tenant paid a security deposit of \$400.00 on August 12, 2008.

The Tenant testified that the deposit has not been returned and that she has provided the landlord with a written request for the deposit. The tenant testified that she has not assigned any portion of the deposit to the landlord.

The landlord received the tenant's application for dispute resolution by April 24, 2009, the date the landlord submitted evidence in response to the application. At the time of application, April 2, 2009 the tenant provided an address which was the rental unit address, as she was to move out at the end of April. During the hearing the landlord testified that she was unable to use the rental unit address for the purposes of service, as the tenant had moved.

During the hearing the tenant provided another forwarding address.

Analysis

Section 38 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. The landlord has not sent the deposit to the address supplied on the tenant's application for dispute resolution which was served to the landlord by April 24, 2009, the date the landlord submitted evidence in response to the tenant's application. At this point the landlord I find the landlord was aware, by virtue of the tenant's application, of the tenant's request for the deposit and was aware that the tenant was moving out of the rental unit. The tenant moved on April 27, at which point the landlord was required to return the deposit. I find that the landlord could have returned the deposit to the address used on the application for dispute resolution as it is not unreasonable to expect a tenant to forward mail via Canada Post.

As the landlord received a request for return of the deposit and an address, effective April 24, 2009, I find that the tenant is entitled to return of the \$400.00 deposit plus interest of \$2.33.

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

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$452.33, which is comprised of the deposit of \$402.33 and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for \$452.33. 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.

Dated May 19, 2009.

Dispute Resolution Officer