Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double her security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

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 service address noted on the Application, on March 26, 2009. The returned envelope with a tracking number attached was submitted in evidence. The Canada Post website shows the mail was returned to the sender on April 20, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act),* however the Landlord did not appear at the hearing.

The hearing commenced at 0900 hours precisely. The Tenant unexpectedly exited the hearing at 0907 hours and, by 0920 hours, had not dialed back into the conference call. I am satisfied that I am able to reach a decision in this matter based on the information provided prior to the Tenant exiting the hearing at 0907 hours.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Tenant submitted a copy of a receipt that shows she paid a security deposit of $800.00 on January 02, 2009 and a copy of a receipt that shows she paid another security deposit of $400.00 on January 14, 2009. The Tenant stated that this tenancy ended on February 28, 2009; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and

that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she mailed her forwarding address to the Landlord on, or about, March 03, 2009. She stated that she received a cheque from the Landlord, in the amount of $45.15, that was dated March 14, 2009. A copy of this cheque was submitted in evidence.

Analysis

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenant paid a security deposit of $1,200.00; that the Landlord returned $45.15 of the security deposit on, or about, March 14, 2009; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that this tenancy ended on February 28, 2009 and that the Tenant provided the Landlord with a forwarding address, in writing, on, or about March 03, 2009.

Section 38(1) of the *Act* stipulates 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 entire security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution to retain a portion of the deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

In this tenancy, no interest has accrued on the security deposit.

Conclusion

I find that the Tenant has established a monetary claim of $2,450.00, which is comprised of double the security deposit, and $50.00 as compensation for the cost of

filing this Application for Dispute Resolution.

I will offset the monetary claim by the $45.15 that was returned by the Landlord on March 14, 2009, and I will issue a monetary Order to the Tenant in the amount of $2,404.85. 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 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: June 25, 2009.

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Dispute Resolution Officer