



Dispute Resolution Services

Page: 1

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.

Both parties were represented 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 relevant oral evidence, to ask relevant questions, and to make submissions to me.

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 Landlord and the Tenant agree that this tenancy began on October 01, 2008; that it ended on February 28, 2009; that the Tenant provided the Landlord with her forwarding address in writing on February 28, 2009; that the Tenant paid a security deposit of \$439.50 on October 10, 2008; that the Tenant did not authorize the Landlord to retain the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that he sent the Tenant a cheque, in the amount of \$441.16, on March 16, 2009, which represented the return of her security deposit plus interest of \$1.66.

Analysis

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

Residential Tenancy Branch
Ministry of Housing and Social Development

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 did not repay the full security deposit with interest until sixteen days after the tenancy ended and he did not file an Application for Dispute Resolution to retain a portion of the deposit.

I note that although the Landlord clearly breached the Act, I do not find that the Landlord acted with any malice. I accept the Landlord's statement that there was a delay in returning the security deposit because he was on holidays. Regardless, I find that the Act has been breached and I do not have discretion in regards to the application of section 38(6).

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.

Conclusion

I find that the Tenant has established a monetary claim of \$930.50, which is comprised of double the security deposit, \$1.50 in interest on the original amount, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

I offset this monetary claim by the \$441.16 that was returned by the Landlord in March of 2009, and I will issue a monetary Order to the Tenant in the amount of \$489.34. 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: July 02, 2009.

Dispute Resolution Officer