



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This matter dealt with an application by the Tenant for the return of his security deposit as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of his security deposit?

Background and Evidence

This tenancy started on July 1, 2006 and ended on February 28, 2009. Rent was \$825.00 per month plus a share of the utilities for the rental property. The Tenant paid a security deposit of \$410.00 on June 13, 2006. The Tenant said that he did a move out condition inspection report with the Landlords on February 28, 2009 and at that time they returned \$250.00 of the security deposit to him. The Tenant claimed that the Landlords told him they would retain \$160.00 which they estimated would be his share of the gas and hydro bills for January and February 2009. The Tenant said he did not give his written authorization for the Landlords to keep any of the security deposit. The Tenant admitted that he did not give the Landlords his forwarding address to send the deposit to and that they did not have a mailing address for him until he served them with a copy of his application in this matter.

The Landlords said they believed they were entitled to retain \$160.00 of the Tenant's security deposit because the Tenant's share of utilities for January and February 2009 was approximately \$200.00. The Landlords also argued that under the tenancy agreement, there was no interest payable on the Tenant's security deposit.

Analysis

Section 38(1) of the Act says that a Landlord must within 15 days of the later of the end of the tenancy or the date they receive the Tenant's forwarding address in writing either return the Tenant's security deposit or apply for dispute resolution to make a claim against it. If a Landlord does not do either of these things and does not have the written consent of the Tenant to keep the security deposit, then pursuant to s. 38(6) of the Act,

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the Landlord must pay the Tenant double the amount of the security deposit (plus accrued interest).

Section 38(1) of the Act also provides that the security deposit must be returned with accrued interest calculated in accordance with the regulations. Section 5 of the Act prohibits Parties from contracting out of the Act or regulations and says that any attempt to do so is of no force and effect. Consequently, I find that the term of the Parties' tenancy agreement that provides that no interest is payable on the security deposit contravenes the Act and is of no force and effect.

I find that the Tenant's act of serving the Landlord with his application (which includes his address for service) does not constitute giving the Landlords his forwarding address in writing for the purposes of receiving his security deposit under s. 38 of the Act. As a result, I find that the Tenant did not give his forwarding address in writing and that the Landlords are only liable for returning the balance of the Tenant's security deposit of \$160.00 plus accrued interest of \$13.58. As the Tenant has been successful in this matter, he is also entitled to recover his \$50.00 filing fee for this proceeding.

Conclusion

A monetary order in the amount of **\$223.58** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 15, 2009.

Dispute Resolution Officer