



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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 Tenants have 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 affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are 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)*.

Background and Evidence

The tenancy commenced on November 15, 2006 and terminated on February 15, 2009. The Tenants paid a security deposit of \$1,200.00 on October 31, 2006.

On March 4, 2009 the Tenants provided the Landlord with a written forwarding address, sent via email to the landlord who confirmed receipt of the email. The Tenants testified that the deposit has not been returned.

The Landlord testified that a move in and move out condition inspection was not completed and that the tenants did not assign any portion of the deposit to the landlord.

The Landlord testified that she was under the impression she could present evidence on a claim she would like to make against the Tenants. The Landlord has not made application for dispute resolution.

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. If the Landlord has failed to comply with section 24(2) (landlord failure to meet start of tenancy condition report requirements) or 36 (2) (landlord failure to meet end of tenancy condition report requirements) the Landlord **must** pay double the deposit. (Emphasis added.)

A move-in condition inspection or move-out condition inspection was not completed, as required by the Act. Further, the Landlord has not repaid the deposit as requested in writing by the Tenants on March 4, 2009. Therefore, I find that the Tenants are entitled to return of double the \$1,200.00 deposit paid to the Landlord.

The landlord is holding a \$1,200.00 deposit, plus \$37.35 interest in trust.

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

Conclusion

I find that the Tenants have established a monetary claim, in the amount of \$2487.35.00, which is comprised of \$2,437.35 deposit owed and \$50.00 in compensation for the filing fee paid by the Tenants for this Application for Dispute Resolution.

Based on these determinations I grant the Tenants a monetary Order for **\$2,487.35**. 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 June 24, 2009.

Dispute Resolution Officer