

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Tenant’s application for return of the security deposit paid to the Landlord, together with recovery of the filing fee for the cost of the application.

Issues to be decided

- Is the Tenant entitled to a monetary order in respect to the security deposit, and if so in what amount?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

Tenant’s agent’s testimony and evidence

- The Tenant mailed the Landlord the Notice of Hearing documents, by registered mail, on March 18, 2009 to the Landlord’s address for service. The Tenant provided a receipt for the registered mail documents, together with a tracking number.
- The tenancy started on August 15, 2008, and ended on February 1, 2009. Monthly rent was \$1,550.00, due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$1,550.00 on August 1, 2008. There was no move-in inspection done at the start of the tenancy and no move-out inspection at the end of the tenancy.
- The Landlord moved into the rental unit at the end of the tenancy.

- The Tenant provided the Landlord with a forwarding address in writing on February 21, 2009, requesting return of the security deposit. The Tenant mailed the Landlord the forwarding address, by registered mail, to the Landlord's address for service noted on the tenancy agreement as well as to the Landlord's new residential address. The Tenant provided tracking numbers for the two registered mail packages. The Tenant received a letter from the Landlord in reply, but the Landlord did not return the security deposit to the Tenant.

Analysis

I accept the Tenant's agent's testimony that the Landlord was duly served with the Notice of Hearing package, by registered mail. The Hearing was scheduled to begin on June 30, 2009, at 1:00 p.m. The Landlord did not attend the Hearing and this matter proceeded in the Landlord's absence.

I accept the Tenant's agent's testimony that the Tenant provided the Landlord with a forwarding address, by registered mail, on February 21, 2009. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the document. I find that the Landlord was provided with written notification of the Tenant's forwarding address on February 26, 2009.

Sections 38(1) and (6) of the Act state:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord did not repay the security deposit or make an application for dispute resolution within 15 days of receiving the Tenant's forwarding address. The Tenant did not waive the right to double the security deposit. Therefore, pursuant to Section 38(6) of the Act, the Tenant is entitled to double the security deposit, in the amount of \$3,100.00, and I make that order.

The Tenant has been successful in this application and is entitled to recover the cost of the filing fee from the Landlord.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim in the amount of \$3,150.00 against the Landlord and issue a Monetary Order in that amount. The Monetary Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Date of Decision: July 10, 2008
