



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a monetary order under Section 38(6) of the Act?
- (2) Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The Tenant paid a security deposit to the Landlord in the amount of \$437.50 on November 1, 2006. The tenancy started on November 1, 2006 and ended at the end of September, 2008.

Tenant’s testimony and evidence

The parties did a move-out inspection at the end of the tenancy, and the Landlord provided the Tenant with a post-dated cheque in the amount of \$524.00, returning the

security deposit in full together with \$85.50 owed to the Tenant for the cost of supplies for repairs done by the Tenant at the rental unit.

The Tenant attempted to cash the cheque, but the Landlord had put a “stop payment” on the cheque. The Tenant provided a copy of the cheque into evidence.

On November 10, 2008, the Tenant provided the Landlord with written notification of his forwarding address, requesting return in full of his security deposit, via registered mail. The Tenant provided the tracking number for the document.

Landlord's testimony

The Tenant replaced light fixtures in the rental unit without the Landlord's permission.

The Landlord put new carpets in the rental unit a year before the Tenant moved in. The Landlord stored the remnants from the carpet, along with $\frac{3}{4}$ of a gallon of paint and some painting supplies in a storage area at the rental unit. The Landlord told the Tenant that these materials were in the storage area and the Tenant knew that the Landlord wanted to keep them for future use. The Tenant threw out, or otherwise lost, the items and the Landlord wants the Tenant to pay the Landlord compensation for their loss.

The Tenant did not shampoo the carpets properly before he moved out of the rental unit and the Landlord had to re-do them.

Analysis

This is the Tenant's application for return of the security deposit. The Landlord did not file an application for damages and is at liberty to do so, should he choose to.

It is important to note that a security deposit does not belong to a landlord. It is held in trust for the tenant, to be applied in accordance with the Act.

Unless a tenant agrees in writing that a landlord may retain an amount to pay a liability or obligation of the tenant, 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** repay any security deposit or pet damage deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not return the deposit or file for dispute resolution, the landlord **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I enclose a copy of Section 38 of the Act for the information of the Landlord.

The Landlord did not return the full security deposit, nor did he file an application against the security deposit within 15 days of receiving the Tenant's written notification of his forwarding address. Therefore, the Tenant is entitled to double the amount of the security deposit retained by the Landlord.

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

I grant the Tenant a monetary order against the Landlord, calculated as follows:

Double the security deposit in the amount of \$437.50	\$875.00
Accrued interest on \$437.50 security deposit	\$13.61
Filing fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$938.61

Conclusion

Pursuant to Sections 38(6) and 67 of the Act, I grant the Tenant a monetary order for \$938.61 against the Landlord. This 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.

July 30, 2009
