



Dispute Resolution Services

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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 his security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the service address noted on the Application, on May 15, 2009. The Tenant submitted a copy of the Canada Post receipt with a tracking number in evidence. The Canada Post website shows the mail was delivered to the Landlord on May 19, 2009, at which time his signature was electronically recorded. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

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 Tenant stated that he entered into a verbal tenancy agreement with the Landlord on March 04, 2009, which was scheduled to begin on April 01, 2009. He stated that he agreed to pay \$750.00 per month in rent and that he provided the Landlord with a deposit of \$375.00 on March 04, 2009.

The Tenant stated that he believed the deposit he provided to the Landlord on March 04, 2009 was a security deposit. He submitted a copy of a receipt that he stated was provided to him by the Landlord. This receipt indicates that the Landlord received \$375.00 from the Tenant on March 04, 2009 for "half rent for April 2009".



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The Tenant stated that he had a conversation with the Landlord on March 28, 2009, at which time the Landlord would not provide him with a key to the rental unit and he advised the Tenant that he was not certain if he was going to allow the Tenant to move into the rental unit. The Tenant stated that he subsequently telephoned the Landlord on several occasions, at which time he left messages for the Landlord. The Tenant stated that he had difficulty contacting the Landlord by telephone. He stated that he eventually spoke with the Landlord on April 02, 2009, at which time the Landlord advised him that he would not be proceeding with the tenancy.

The Tenant stated that he provided the Landlord with his forwarding address, in writing, on April 15, 2009.

Analysis

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Landlord entered into a tenancy agreement that was to begin on April 01, 2009 and that the Landlord ended this tenancy before it began when he refused to provide the Tenant with access to the rental unit.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenant paid \$375.00 in rent on March 04, 2009. I cannot conclude that this payment represented a security deposit, as defined by section 38 of the *Act*, as the receipt clearly defines it as a rent payment. As the payment was not a security deposit, I find that I cannot award the Tenant compensation for not having this money returned to him 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, pursuant to section 38(6) of the *Act*.

I do find that the Landlord ended this tenancy on, or before, April 01, 2009 in a manner that does not comply with the *Act*, as he did not provide the Tenant with written notice of his intent to end the tenancy. As the Landlord collected rent for the first half of April and then unlawfully prevented the Tenant from occupying the rental unit, I find that the Landlord must return the \$375.00 in rent that he collected.

Conclusion

I find that the Tenant has established a monetary claim of \$425.00, which is comprised of \$375.00 in rent and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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



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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: August 24, 2009.

Dispute Resolution Officer