

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenant's application a monetary order for double the security deposit paid to the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit?

Background and Evidence

The Tenant gave the following testimony:

- The Tenant paid the Landlord a security deposit in the amount of \$650.00 on April 7, 2007.
- On April 29, 2009, the Tenant met with an agent of the Landlord to perform a move-out inspection.
- The Tenant gave the Landlord her written forwarding address, by providing it to the Landlord's agent on the Condition Inspection Report form.
- On May 22, 2009, the Tenant received a cheque in the amount of \$325.00 in her mail box. The cheque was accompanied by a statement showing deductions for carpet cleaning and painting.
- The Tenant did not agree to these deductions and has not cashed the Landlord's cheque.

The Landlord's agent gave the following testimony:

- The Landlord's agent stated that the Tenant was an excellent Tenant.
- The Landlord usually cleans the carpets themselves at the end of a tenancy.
The Landlord's agent was not aware that the Tenant had hired a professional

carpet cleaner to shampoo the carpets. He didn't have a copy of the invoice until he received the Notice of Hearing documents.

- There were excessive nail holes in the walls, which necessitated painting.
- The Landlord's agent did not dispute any of the testimony provided by the Tenant.

Analysis

A security deposit is not the property of the Landlord. It is held in trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

I accept the Tenant's testimony that she provided the Landlord with written notification of her forwarding address on April 29, 2009, in accordance with Section 88(b) of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

A copy of Section 38 of the Act accompanies this decision.

The Landlord received the Tenant's forwarding address in writing on April 29, 2009. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$1,300.00, plus accrued interest on the original deposit in the amount of \$7.17.

The Tenant has not cashed the Landlord's cheque in the amount of \$325.00, and I order that the Tenant return the cheque to the Landlord forthwith.

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$1,307.17. 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.

I order that the Tenant return the Landlord's cheque in the amount of \$325.00 to the Landlord forthwith.

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: September 10, 2009.
