

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for return of the security deposit and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlords?

Background and Evidence

Facts on which the parties agree:

- There was no written tenancy agreement between the parties.
- The Tenancy ended on April 30, 2009. The Landlord had called the Tenant on March 21, 2009, and advised that the other Landlord had been transferred and therefore they would be selling the house.
- Rent was \$1,100.00 per month.
- The Tenant paid a security deposit in the amount of \$1,100.00. The parties agreed that the Tenant would pay \$550.00 for rent for the month of April, 2009, and the remainder of April's rent would be deducted from the security deposit. This left the amount of \$550.00 remaining in the security deposit.

- There was no formal Condition Inspection done when the Tenant moved in, or when the Tenant moved out of the rental unit.

The Tenant gave the following testimony:

- The Tenant served the Landlords with the Notice of Hearing documents by registered mail on June 24, 2009. The Tenant did not provide proof of service of the registered mail documents.
- The Tenant did not provide the Landlords with his forwarding address in writing. The Tenant provided the Landlords with his forwarding address in a telephone conversation on June 16, 2009.
- Initially, the Tenant gave the Landlords the wrong address, but called back 40 minutes later and gave them the correct address.
- The Tenant did not receive any of the remainder of his security deposit back.

The Landlord gave the following testimony:

- The Landlord was not sure when the Landlords received the Notice of Hearing documents, but believed it was some time before July 21, 2009.
- The Landlord decided to refund only half of the remaining security deposit (\$225.00) to the Tenant because of a stain the Tenant had left on the carpet.
- The Landlord sent the cheque in the mail on June 16, 2009, but it came back because the Tenant had given her the wrong forwarding address.
- When the Landlord received the returned cheque, she decided not to refund the Tenant anything because she had to clean the house and repair a hole in a wall that was left when the Tenant's satellite dish was removed.

Analysis

The Landlord gave testimony to suggest that she believes the Landlords have a

monetary claim against the Tenant. However, the Landlords have not filed an application. This Hearing was scheduled to deal with the Tenant's application.

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

The Tenant did not provide the Landlords with his forwarding address in writing before filing his Application for Dispute Resolution. However, the Landlords did receive his forwarding address when they were served with the Notice of Hearing documents. The Tenant could not prove that he mailed the documents to the Landlords on June 24, 2009. However, the Landlord testified that she had received the Notice of Hearing documents some time before July 21, 2009. Therefore, I find that the Landlords received the Tenant's forwarding address in writing on July 21, 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 remaining security deposit, in the amount of \$1,100.00.

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

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlords in the amount of \$1,150.00. This Order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that 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: September 29, 2009.
