



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions to me. The landlord entered the hearing several minutes after it commenced and was informed of the discussion that had occurred up to that point in the hearing.

Preliminary Matters

At the start of the hearing the Application for Dispute Resolution was amended to remove the landlord's daughter's name. The Application was also amended to correct the landlord's surname. The landlord confirmed that her daughter had received the Notice of Hearing and Application for Dispute Resolution some time ago and then given her the documents.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Background and Evidence

The tenancy commenced on September 3, 2008 and terminated in May 2009. The parties do not agree on the end date of this fixed-term tenancy. The Tenant paid a

Residential Tenancy Branch
Ministry of Housing and Social Development

security deposit of \$1,000.00 on September 3, 2008. Rent was \$1,600.00 per month, due on the first day of each month.

The tenant testified that when he moved out in early May 2009 he met with the landlord's daughter and told her that the forwarding address and contact information was left on a table in the rental unit. The tenant stated that on the day he was moving out the landlord's daughter went through the rental unit with him and indicated that the unit was in good condition.

A move-out condition inspection was not completed; the landlord provided evidence of a move-in condition inspection. The tenant stated that 35 days after he moved out he called the landlord who indicated she had lost the forwarding address and that the landlord requested his contact information. The landlord stated that she told the tenant she could not find the note the tenant said he had left in the rental unit.

The landlord testified that the tenants moved out without proper notice and that they broke their fixed-term tenancy. The landlord stated that her daughter had told her the tenant's forwarding address was on a table in the rental unit but that she could not locate this paper. The landlord's daughter stated that she did not see this note and that it was well after the tenancy had ended that the tenant sent her text message indicating the note had been left in the rental unit.

The landlord stated that she was subsequently contacted by the tenant and that she asked him about damages that had been left to the rental unit. The landlord stated that she did not complete a move-out condition inspection as the tenants moved without providing her with a date or notice. The landlord testified that her daughter did not represent her or act as her agent. The landlord has not applied for dispute resolution.

The landlord testified that the \$200.00 deposit, beyond that allowed under section 19 of the Act, was paid, as she provided furniture to the tenants.

Analysis

Section 38 of the Act determines that the Landlord must, within 15 days after the later of the date the tenancy ends **and** the date the Landlord received the Tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the Landlord has failed to comply with section 24(2) (landlord failure to meet start of tenancy condition report requirements) or 36 (2) (landlord failure to meet end of tenancy condition report requirements) the Landlord **must** pay double the deposit. (emphasis added.)

Residential Tenancy Branch
Ministry of Housing and Social Development

I have accepted the landlord's testimony that a move-out condition inspection was not completed as she was not fully informed of the tenant's move-out date. The landlord has confirmed that she has not repaid the deposit.

I do not accept the tenant's testimony that he left his forwarding address on a table in the rental unit and find that, on the balance of probabilities, even if the information had been left on a table, the landlord was unable to locate the note. There is no evidence before me that the tenant ensured the landlord was provided with a written request for return of the deposit, as required by section 38 of the Act. Therefore, I find that the tenant has not provided the landlord with a written request for return of the deposit paid.

The landlord has not returned the deposit paid; therefore, I find that the tenant is entitled to return of the deposit plus interest in the sum of \$1,004.92.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,004.92, which is comprised of the deposit plus interest.

I dismiss without leave to reapply, the tenant's claim for double the deposit paid.

Based on these determinations I grant the tenant a monetary Order for \$1,004.92. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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 21, 2009.

Dispute Resolution Officer