



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 Tenants applied for the return of double their 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 July 23, 2009. The Tenant submitted a Canada Post receipt, with a tracking number, although the Landlord's name and address was not written on the receipt. The Canada Post website shows the mail was delivered on July 27, 2009. 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 Tenants are 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 they paid a \$600.00 security deposit and a \$600.00 pet damage deposit on October 29, 2003. The Tenants submitted a copy of a tenancy agreement that corroborates this statement.

The Tenant stated that this tenancy ended on June 30, 2009; that the Tenants did not authorize the Landlord to retain the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that a letter in which they declared their forwarding address was given to the Landlord's realtor on July 02, 2009 at the same time the keys to the rental unit were returned to her. He stated that he gave the keys to the realtor because he

understood she was working on behalf of the Landlord, as she was the individual who served him with a Two Month Notice to End Tenancy. A copy of that letter is attached.

The Tenant stated that he received a cheque in the mail, dated July 13, 2009, in the amount of \$1,242.45 on July 24, 2009. The Tenants submitted a copy of the cheque, which clearly indicates that it represents the return of the Tenants' security deposit. He stated that he has not yet cashed this cheque. The Tenant submitted a copy of the envelope which contained the cheque, which is date stamped July 20, 2009.

The Tenants filed this application on July 23, 2009, which is the day before they received the above mentioned cheque in the mail.

Analysis

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 on October 29, 2003; that the Tenants did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it; that this tenancy ended on June 30, 2009 and that the Tenant provided an agent for the Landlord with a forwarding address, in writing, on July 02, 2009.

Section 38(1) of the *Act* stipulates that 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 either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord was required to either repay the security deposit and pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits on, or before, July 17, 2009.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenants received their security deposit and pet damage deposit, plus interest, on July 24, 2009. On the basis of the date stamp on the envelope and in the absence of evidence to the contrary, I find it reasonable to conclude that the payment was mailed on July 20, 2009. As the Landlord did not mail the deposits until July 20, 2009 and the Landlord did not file an application for dispute resolution I find that the Landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit and pet damage deposit that was paid, plus any interest due on the original amount.

Conclusion

I find that the Tenant has established a monetary claim of \$2,492.49, which is comprised of double the security deposit, \$42.49 in interest which is calculated based on the determination that the deposits were mailed to the Tenant on July 20, 2009, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

I find that the Tenant currently holds a cheque from the Landlord, in the amount of \$1,242.45, in partial satisfaction of this monetary claim. In the event that the Tenant is unable to successfully process this cheque, I hereby Order that the Tenant has the right to file another Application for Dispute Resolution claiming compensation for this amount.

I am issuing a monetary Order for the remainder of the monetary claim, which is \$1,250.04. 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 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: November 23, 2009.

Dispute Resolution Officer