



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD

Introduction

This is the Tenant's application for return of part of the security deposit.

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

Issue(s) to be Decided

Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The subject rental unit is an apartment in a rental property consisting of 18 rental units. There are 2 two-bedroom apartments, 2 bachelor apartments and 14 one-bedroom units.

The Tenant paid a security deposit in the amount of \$412.50 on May 21, 2008.

One of the Landlord's agents and the Tenant completed an outgoing Condition Inspection Report on May 31, 2009, a copy of which was entered in evidence. In the report, the Tenant agreed that the Landlord could keep a portion of the security deposit for the cost of shampooing the carpets.

The Landlord returned a portion of the Tenant's security deposit in the amount of \$46.55 to the Tenant's forwarding address on June 11, 2009, calculated as follows:

| Description | Amount |
|---|------------------|
| Security deposit paid | \$412.50 |
| Plus accrued interest on security deposit | \$3.80 |
| Less general cleaning (1 hour @ \$15.00 per hour) | -\$15.00 |
| Less cleaning supplies | -\$5.00 |
| Less cost to clean carpets | -\$99.97 |
| Less costs to replace/repair blinds | -\$50.00 |
| Less cost to remove junk | <u>-\$200.00</u> |
| Net security deposit refund | \$46.55 |

A copy of the Security Deposit Refund Statement was entered in evidence.

The Tenant's application is for return of the \$200.00 charged for junk removal because she did not leave any junk at the rental property. She stated that she is not disputing the deductions for general cleaning and supplies and repairing/replacing the blinds.

The Landlord testified that the Tenant was the only Tenant to move out of the rental unit on May 31, 2009. The Landlord stated that the junk was discovered in the dumpster after the Condition Inspection Report was concluded, but the same day the tenancy ended. The Landlord stated that the dumpster is located in a secure area in the underground parking and that therefore, the junk must have been left by the Tenant.

The Landlord stated that he had not filed an application against the security deposit.

Analysis

A security deposit is held in trust for a Tenant, to be applied in accordance with Section 38 of the *Residential Tenancy Act* (the "Act"). Section 38 of the Act provides that, unless a Tenant agrees in writing that the Landlord may retain a portion of the deposit, within 15 days of the later of the date the tenancy ends and the date the Landlord receives the Tenant's forwarding address, the Landlord **must** either:

- Return the security deposit to the Tenant, together with accrued interest; or

- Make an Application for Dispute Resolution claiming against the security deposit.

Section 38 of the Act further provides that if the Landlord does not do one of these two things, the Landlord may not make a claim against the security deposit, and **must** pay the tenant double the amount of the security deposit.

Regardless of whether or not the junk belonged to the Tenant, the onus was on the Landlord to secure the Tenant's written permission to retain the \$200.00; repay the \$200.00, or file an Application for Dispute Resolution. The Landlord did none of these things and therefore I find that the Tenant is entitled to a Monetary Order in the amount of \$400.00, or double the \$200.00.

Conclusion

I grant the Tenant a Monetary Order against the Landlord in the amount of \$400.00. 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

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.

December 14, 2009

Date of Decision
