



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD

Introduction

This is the Tenants' application for a Monetary Order for double the security deposit paid to the Landlord.

The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a Monetary Order for double the security deposit, pursuant to the provisions of Section 38(6) of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

The Tenant paid the Landlord a security deposit in the amount of \$300.00 on May 1, 2007. The Tenant moved out of the rental unit on July 31, 2009.

The Tenant gave the following testimony:

The Tenant testified that he provided the Landlord with written notification of his forwarding address on August 10, 2008. The Tenant provided a copy of the written notification. A witness signed the notification, indicating that the Landlord received it on August 10, 2009.

The Tenant stated that the Landlord has not returned the Tenants' security deposit, and therefore he is applying for double the security deposit, in accordance with the provisions of the Act.

The Landlord's agent (the "Agent") gave the following testimony:

The Agent testified that the Landlord RF is not a landlord, but was an agent for the Landlord CA. The Landlord RF is no longer working for the Landlord CA.

The Agent testified that the Landlord received the Tenant's forwarding address on August 24, 2009, and not on August 10, 2009, as alleged by the Tenant. The Agent testified that the Tenant was provided with two opportunities to perform a move out inspection and the Tenant declined to do so. The Agent testified that the Tenant was provided with a Notice of Final Opportunity to Schedule a Condition Inspection, but the Tenant did not comply. Therefore, the Agent submitted, the Tenant is not entitled to claim against the security deposit. The Agent relies on the provisions of Section 38(2) of the Act.

The Agent testified that the Tenant left furniture and personal items at the rental unit when he moved out, and caused damage to the carpets.

Analysis

This Hearing was scheduled to determine the Tenant's Application filed August 28, 2009. The Landlord's agent provided testimony to suggest that she believes the Landlord has a claim for damages against the Tenant. The Landlord has not filed an application for damages, but is at liberty to do so.

A security deposit is held in trust by the landlord for the tenant, to be administered in accordance with Section 38 of the Act.

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ended and the date the Landlord received the Tenants' forwarding address in writing, the Landlord **must** repay any security deposit or pet damage deposit to the Tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(2) of the Act provides that Section 38(1) does not apply, and the Tenant's right to return of the security deposit is extinguished, if the Tenant does not participate in an end of tenancy inspection. The Landlord must offer the Tenant at least two opportunities for the inspection. If the Tenant does not participate in the inspection, the Landlord must provide the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection. The Landlord did not provide any documentary evidence to support her claim that she had either issued or provided the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection. The Tenant denied receiving any such Notice. Therefore, I find that the Tenant's right to return of the security deposit was not extinguished under Section 38(2) of the Act.

Section 38(6) of the Act provides that if the Landlord does not comply with Section 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.

I accept the Tenant's testimony and supporting documentary evidence that he provided the Landlord with written notification of his forwarding address on August 10, 2009. The Landlord did not file an application against the security deposit within 15 days of receiving the Tenants' forwarding address and therefore must pay the Tenants double the security deposit.

I grant the Tenant a monetary order in the amount of \$607.57, calculated as follows:

Double the security deposit	\$600.00
Accrued interest on the \$300.00 security deposit	<u> \$7.57 </u>

Balance owing by the Landlord to the Tenant

\$607.57

Conclusion

I grant the Tenant a Monetary Order against the Landlord CA in the amount of \$607.57. This Order must be served on the Landlord CA 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 16, 2009

Date of Decision
