



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

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.

The Tenant#1 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 October 02, 2009. She provided a tracking number for the mail but did not submit a copy of the Canada Post receipt. In the absence of evidence to the contrary, I find that 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.

Background and Evidence

The Tenants submitted copy of receipts that shows the Tenant #1 paid a security deposit of \$500.00 on October 07, 2008 and that the Tenants paid monthly rent of \$1,000.00 for November of 2008, December of 2008, January of 2009, February of 2009, March of 2009; and April of 2009.

The Tenant #1 stated that this tenancy ended on April 30, 2009 and that she sent the Landlord her forwarding address, by regular mail, on July 24, 2009. A copy of the letter that was sent to the Landlord was submitted in evidence. The Tenant submitted a copy of a "Facebook" message from the Landlord to the Tenant#1, dated July 30, 2009, in which the Landlord acknowledged receiving a letter from the Tenants.

The Tenant#1 stated that she gave the Landlord written authorization to retain \$70.00 of her security deposit; that the Landlord did not return any portion of the security deposit;

and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

On the basis of the evidence provided by the Tenants and in the absence of evidence to the contrary, I find that the Tenants paid a security deposit of \$500.00; that the Landlord did not return any portion of the security deposit; that the Tenant authorized the Landlord to retain \$70.00 from 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 the remaining \$430.00 of the security deposit.

On the basis of the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that this tenancy ended on April 30, 2009 and that the Tenant sent the Landlord her forwarding address, in writing, on July 24, 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 failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), 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 Tenants double the security deposit that was paid, plus any interest due on the original amount.

Conclusion

I find that the Tenants have established a monetary claim of \$1,001.76, which is comprised of double the security deposit plus \$1.76 in interest on the original amount of the security deposit. As the Tenants gave the Landlord written authorization to retain \$70.00 from the security deposit, I find that the Tenants' monetary claim should be reduced by \$70.00.

On this basis, I am issuing a monetary Order in the amount of \$931.76. 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: January 26, 2010.

Dispute Resolution Officer