

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This is the Tenant's application a monetary order for double the residue of the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlords.

I reviewed the evidence provided prior to the Hearing. The Tenant's agent gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the remainder of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlords?

Background and Evidence

The Tenant's agent gave the following testimony:

- The Tenant mailed both of the Landlords the Notice of Hearing documents, by registered mail, on September 17, 2009. The Tenant's agent provided tracking numbers for the registered mail packages. A search of Canada Post's tracking system confirms the registered mail documents were received by both Tenants on September 18, 2009.
- The Tenant paid the Landlords a security deposit in the amount of \$300.00 on May 31, 2006.
- There was no move-out inspection done when the Tenant vacated the rental unit. The tenancy ended on August 31, 2009. The Landlords told the Tenant not to worry, that they would be returning the security deposit in full.
- The Tenant did not give the Landlords permission to withhold any of the security deposit. The Landlords returned a portion of the Tenant's security deposit in the amount of \$73.00 on September 4, 2009, along with an accounting of the

deductions the Landlord made from the security deposit (the “Security Deposit – Statement of Account”) and invoice #420977 dated September 4, 2009. The Landlords did not provide any interest which had accrued on the original security deposit. The Tenant provided a copy of the accounting, along with a copy of the invoice. The Security Deposit – Statement of Account shows the Tenant’s address as the Tenant’s forwarding address.

- The Tenant gave the Landlords written notification of her forwarding address when she gave her notice, but the Tenant’s agent was not certain what date notice was given.

Analysis

I am satisfied that the Landlords were served with the Notice of Hearing documents. Despite being served, the Landlords did not sign into the conference call and the Hearing proceeded in their absence.

A security deposit is not the property of a landlord. It is held in trust by a landlord for their tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) after receipt of a tenant’s forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

In this case, no documentary evidence was provided to indicate what day the Landlords received the Tenant’s forwarding address in writing. However, the Landlords mailed the Tenant a partial refund of her security deposit on September 4, 2009 to her forwarding address. Therefore, I find that the Landlords were in receipt of the Tenant’s forwarding address by September 4, 2009. Furthermore, I find that the Landlords received written notification of the Tenant’s forwarding address when they received the Notice of Hearing documents on September 18, 2009, along with the Tenant’s Application for Dispute Resolution filing against the security deposit. The Landlords did not have the

Tenant's permission to retain any of the security deposit, and did not file an Application for Dispute Resolution against the Tenant's security deposit within 15 days of September 18, 2009.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, the Tenant is entitled to a monetary order for double the residue of the security deposit, in the amount of \$454.00 (\$227.00 x 2), plus accrued interest on the original deposit in the amount of \$9.98.

The Tenant has been successful in her application and is entitled to recover the cost of filing fee from the Landlords.

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlords in the amount of \$513.98. This Order must be served on the Landlords 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*.

Dated: January 7, 2010
