



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order requesting return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing the landlord testified that she had not been served with the Application, only the fact sheet, service information and Notice of Hearing. The landlord was aware that the hearing was in relation to a dispute over payment of the deposit to the tenant. The tenant testified that she had sent the landlord all required documents. After discussing the nature of the Application and the facts that would assist in my determination of the Application the landlord agreed to proceed with the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 15, 2009 and terminated on September 15, 2009. The tenant paid a security deposit of \$725.00 on March 13, 2009.

By at least August 10, 2009 the landlord agrees that she had received the tenant's written forwarding address. The parties agreed that on September 29, 2009, the landlord issued the tenant a cheque in the sum of \$381.29 and mailed this to the tenant.

The landlord had made deductions from the deposit paid. A move-in and move-out condition inspection was not completed. The landlord has not made an Application for dispute resolution claiming against the deposit.

The tenant has not cashed the cheque issued on September 29, 2009.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the landlord failed to return the deposit within fifteen days of the end of the tenancy; September 15, 2009. The landlord had the tenant's forwarding address and failed, within fifteen days of the end of the tenancy to return the deposit or make an Application claiming against the deposit. Therefore, as provided by section 38(6) of the Act, I find that the tenant is entitled to return of double the deposit paid on the sum of \$1,450.00.

The tenant is holding a cheque issued by the landlord. If this cheque is cashed, that amount must be declared by the tenant when enforcing the monetary Order.

I find that the tenant's application has merit, and the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,500.00, which is comprised of double the deposit in the sum of \$1,450.00 and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution and I grant the tenant a monetary Order in that amount.

In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: February 18, 2010.

Dispute Resolution Officer