Dispute Resolution Services

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 for return of 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. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Preliminary Matter

During the hearing the tenant requested that her Application be amended to reflect the requirement under section 38 of the Act, that the landlord return double the deposit paid. This amendment was allowed, based upon section 38(6) of the Act which states that if certain conditions are not made the landlord must repay double the deposit.

Background and Evidence

The tenancy commenced on July 1, 2005. On July 7, 2005 the tenant paid a deposit in the sum of $412.50. On August 20, 2009 the tenant gave her written notice to ending the tenancy, which also included her forwarding address. The landlord confirmed receipt of the forwarding address.

The tenant moved out of the rental unit at the end of September 2009.

The Tenant testified that the deposit has not been returned. The landlord believes the tenant owes them money for cleaning costs and had made deductions from the deposit paid.

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.

The landlord has not repaid the deposit as requested in writing by the tenant. Therefore, I find that the tenant is entitled to return of double the 412.50 deposit paid to the landlord.

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

The landlord is holding a deposit plus interest in the sum of 427.12; of which $14.62 is interest.

Conclusion

I find that the tenant has established a monetary claim, in the amount of **$889.62,** which is comprised of double the deposit paid, interest and $50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

I grant the tenant a monetary Order for $889.62**.** 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.*

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 15, 2010.

_____
Dispute Resolution Officer