

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant on October 22, 2009 seeking a Monetary Order for return of her security deposit in double after the landlord did not return or make application to claim upon it with 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenant also seeks to recover the filing fee for this proceeding from the tenant.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of her security deposit in double and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on January 1, 2009 under a fixed term agreement to conclude on October 1, 2009, as it did. Rent was \$1,500 per month and the landlord held a security deposit of \$750 paid on October 6, 2009.

During the hearing, the tenant gave evidence that she had received \$650 of her security deposit on October 6, 2009, payment made within 15 days as required under the *Act*.

The tenant also concurred with the landlord's evidence that she had agreed that the landlord could retain \$50 for carpet cleaning.

The tenant submitted a copy of her letter to the landlord dated October 1, 2009 providing a copy of her forwarding address and requesting return of the deposit.

The landlord stated that he had retained \$100 as the carpet cleaning machine had cost \$71 and the tenant had broken a table of which the tenant claimed no knowledge. The landlord stated that he was not familiar with the requirements of the Act with respect to the disposition of security deposits.

Analysis

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit to the tenant or make application for dispute resolution to claim upon it.

In this matter, I find as fact that the landlord did not make application to claim the deposit within 15 days of receiving the tenant's forwarding address and did not return the full deposit.

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

This provision recognizes that a security deposit is held by a landlord in trust, and remains the property of the tenant until either the tenant or due process authorizes the landlord to access it.

Therefore, I find that the tenant is entitled to recover double the amount of the deposit that was retained without her consent and without the landlord having made application to retain it, and to recover the filing fee for this proceeding, calculated as follows:

Total security deposit due	\$750.00
Less amount returned within 15 days	- 650.00
Less amount tenant agreed to for carpet cleaning	- 50.00
Amount retained without authorization	\$ 50.00
To double amount returned without authorization * (no interest due)	50.00
Filing fee	50.00
TOTAL	\$150.00

* Due to low interest rates during the material period, no interest is due on this claim.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$150. for service on the landlord.

February 18, 2010