

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This tenancy started on November 1, 2008 and ended on September 30, 2009 when the Tenant moved out. Rent was \$800.00 per month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

The Tenant said she gave the Landlords her forwarding address in writing in person on September 30, 2009 when she handed in her keys. The Tenant claimed that the Landlords did not return her security deposit and that she did not give them authorization to keep her security deposit.

The Parties agree that they did not do a move out inspection with the Tenant on the last day of the tenancy (as she requested) because one of the Landlords was unavailable. The Parties also agree that one of the Landlords contacted the Tenant the following day to advise her that he had done an inspection of the rental unit and thought she was responsible for some repairs. The Landlords claim that they asked the Tenant to return to do a move out inspection but the Tenant claimed the Landlords never asked her to participate in a move out inspection. The Landlords admit that they did not complete a move in or a move out condition inspection report.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date they receive the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against the deposit. If a Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

Sections 24(2) and 36(2) of the Act also say that if a Landlord does not complete a move in or a move out condition inspection report, the Landlord's right to make a claim

against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however they may not keep the security deposit in payment of those damages.

I find that the Landlords received the Tenant's forwarding address in writing on September 30, 2009 but did not return her security deposit and did not make an application for dispute resolution to make a claim against the deposit. I also find that the Landlords did not have the Tenant's written authorization to keep the security deposit and that their right to make a claim against it for compensation for alleged damages to the rental unit was extinguished under s. 24(2) and s. 36(2) of the Act because they did not complete a move in or a move out condition inspection report. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit (\$800.00) to the Tenant with accrued interest of \$1.00 (on the original amount).

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit, I find that she did not waive reliance on s. 38(6) of the Act and is entitled to compensation in the amount of \$801.00.

Conclusions

A monetary order in the amount of **\$801.00** has been issued to the Tenant and a copy of the Order must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 02, 2010.

Dispute Resolution Officer