

DECISION

Dispute Codes:

MNSD, O, 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, for compensation for damage or loss and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution, Notice of Hearing and evidence were personally served to each of the landlord's on January 7, 2010. The tenant attended at the landlord's residence in the early afternoon and handed the mail tenant his hearing package. The female tenant did not approach the tenant, who explained the content of the package. The female landlord's copy was given to the male landlord. The tenant had a friend in his vehicle, witnessing the service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Preliminary Matter

The tenant's Application included indication of a damages claim of related to an allegation of harassment and loss of quiet enjoyment; no monetary amount was provided. The evidence indicated that the tenant's had not included an amount claimed in compensation.

As provided by section 59 of the Act, an Application must include the full particulars of the claim being made. As the tenants have not provided the full particulars in relation to their claim for damages I find that this portion of the Application is dismissed with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to return of the deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

A copy of the tenancy agreement was provided as evidence and indicated that on October 1, 2007 the tenant paid a deposit in the sum of \$550.00.

This tenancy ended by mutual agreement on October 31, 2009. On that date the tenant present at this hearing provided the landlord with a written forwarding address. A move-out condition inspection was requested by the tenants, but the landlord stated that this was not necessary and he only wanted the keys.

On November 1, 2009, the tenant returned to the landlord's residence and personally gave the male landlord another written forwarding address, as the first address had included an incorrect postal code. The landlord did not say anything to the tenant to indicate that he had mailed the tenants the deposit. On this date the tenant had his friend's minor aged son with him.

The tenant's have not received the deposit.

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 a tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no evidence that the landlord submitted a claim applying against the deposit paid.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested by the tenants. Based on the affirmed testimony of the tenant and in the absence of the landlord at this hearing, I find that the landlord was provided with a written forwarding address on October 31, 2009 and November 1, 2009.

Therefore; I find, pursuant to section 38(6) of the Act, that the tenants are entitled to return of double the \$550.00 deposit paid to the landlord, plus interest in the sum of \$10.36.

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

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$1,160.36, which is comprised of double the deposit paid in the sum of \$1,100.00; interest of \$10.36 and \$50.00 in compensation for the filing fee paid by the tenants for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for **\$1,160.36**. 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.

The portion of the Application claiming damages for loss of quiet enjoyment and harassment is dismissed with leave to reapply.

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: June 10, 2010.

Dispute Resolution Officer