



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD

Introduction

This is the Tenant's application a monetary order for return of the security deposit paid to the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit in accordance with the provisions of Section 38 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

The following facts are not in dispute:

- The Tenant paid the Landlord a security deposit in the amount of \$500.00 on April 1, 2008.
- The tenancy ended March 1, 2010.

The Tenant gave the following testimony:

- The Tenant served the Landlord with the Notice of Hearing documents on March 28, 2010, by handing the documents to the Landlord.
- The Tenant gave the Landlord her written forwarding address on March 1, 2010.
- The Tenant did not agree that the Landlord could retain any of the security deposit.
- The Landlord told the Tenant that she would mail the Tenant a refund of her security deposit on March 8, 2010, but did not.
- The Landlord has not refunded any of the Tenant's security deposit.

The Landlord's agent gave the following testimony:

- The Landlord did not receive the Tenant's forwarding address until she was served with the Notice of Hearing documents.
- The Landlord has not filed an Application for Dispute Resolution against the security deposit.

- The Landlord did not return any of the security deposit because the Tenant caused damage to the rental unit and has not paid outstanding utilities.

Analysis

The Landlord gave testimony that the Tenant damaged the rental unit and did not pay her share of utilities, however the Landlord has not filed an Application for damage, and is at liberty to do so.

A security deposit is held in trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after the latter of the date the tenancy ends and the date the tenant provides the landlord with a forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

A copy of Section 38 of the Act accompanies this decision.

The Landlord testified that she received the Tenant's forwarding address in writing on March 28, 2010. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$1,000.00, plus accrued interest on the original deposit in the amount of \$5.64.

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$1,005.64. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.



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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: July 30, 2010.

Dispute Resolution Officer