

DECISION

Dispute Codes: MNSD, FF

Introduction

This is the Tenant's application for return of the Tenant's security deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to a Monetary Order, pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The Tenant gave the following testimony:

The Tenant personally served the Landlord with the Notice of Hearing documents on March 17, 2010.

The Tenant rented the rental unit from July 15, to September 15, 2009. Monthly rent was \$550.00. The Tenant paid a security deposit in the amount of \$275.00 on July 13, 2009. The Tenant provided the Landlord with written notice of a forwarding address on September 28, 2009 at the rental unit, by handing the document to the Landlord with a witness present.

The Landlord only returned \$75.00 of the security deposit to the Tenant, in cash. The Tenant did not agree that the Landlord could retain any of the security deposit.

The Landlord gave the following testimony:

The Landlord returned \$175.00 in cash to the Tenant and kept \$100.00 for cleaning the rental unit.

The Landlord did not look at the document the Tenant provided on September 28, 2009.

Analysis

The parties gave additional testimony that was not relevant to the Tenant's application. For example, the Landlord stated the Tenant didn't give notice to end the tenancy. The

Tenant stated that proper notice was given. The Landlord stated that the rental unit needed cleaning when the Tenant moved out. The Tenant stated that the rental unit was clean and undamaged. This is the Tenant's application for return of the security deposit under the provisions of Section 38 of the Act. There is no other application before me. Whether the Tenant gave the Landlord sufficient notice to end the tenancy, or whether the rental unit was left in a clean and undamaged condition is not relevant to the Tenant's application.

A security deposit is held in trust for a tenant, to be applied in accordance with the provisions of Section 38 of the Act.

Section 38(1) of the Act provides that, unless a tenant agrees in writing that a landlord may retain all or any of the security deposit, within 15 days of the latter of the date the tenancy ends and the date that the tenant provides a forwarding address in writing to the landlord, the landlord **must**:

- Return the security deposit to the tenant; or
- File an Application for Dispute Resolution against the security deposit.

Section 38(6) of the Act provides that if the landlord does not does not comply with the provisions of Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

The Landlord testified that he did not read the document the Tenant provided on September 28, 2009. In any event, the Landlord had the Tenant's forwarding address when the Tenant served the Landlord with the Notice of Hearing documents on March 17, 2010.

In this case, the Landlord did not return the security deposit to the Tenant or file an Application within 15 days of receiving the Tenant's written notification of a forwarding address. The parties disagreed on the portion of the security deposit the Landlord returned to the Tenant at the end of the tenancy. It is an Applicant's responsibility to prove their claim. In this case, the applicant is the Tenant. The Tenant did not provide sufficient evidence of the amount the Landlord returned to the Tenant. Therefore, I find that the Landlord returned \$175.00 to the Tenant.

In accordance with the provisions of Section 38(6) of the Act, I find the Tenant has established a claim for double the security deposit. No interest has accrued on the security deposit.

The Tenant's application had merit and therefore the Tenant is entitled to recover the cost of the filing fee from the Landlord.

I hereby provide the Tenant with a Monetary Order against the Landlord, calculated as follows:

Double the security deposit

\$550.00

Recovery of the filing fee	\$50.00
Less the amount already paid to the Tenant	<\$175.00>
Balance owed to the Tenant	<u>\$425.00</u>
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Conclusion

I hereby provide the Tenant with a Monetary Order against the Landlord in the amount of \$425.00. This Order must be served on the Landlord and may be filed in the Provincial Court 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*.

Dated: July 23, 2010.

Dispute Resolution Officer