

Decision

Dispute Codes: MNSD, OLC, FF

Introduction

This hearing dealt with an application by the tenant for the return of his security deposit, an order instructing the landlord to comply with the Act, regulation or tenancy agreement, and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Despite being served in person with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be decided

- Whether the tenant is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

There is no written tenancy agreement for this tenancy which began on August 23 and ended on October 31, 2009. The tenant rented a room located in the basement of a house where the landlord also resides. The tenant testified that the landlord is not also the owner of the house. Monthly rent was \$700.00, and a security deposit of \$350.00 was paid on August 21, 2009.

In a letter to the landlord dated October 31, 2009, the tenant requested the return of his security deposit and informed the landlord of his forwarding address. Subsequently, however, the landlord has not returned the security deposit.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord has not complied with the above statutory provisions where it concerns return of the tenant's security deposit.

Accordingly, I find that the tenant has established entitlement to a monetary order in the amount of **\$750.00**. This is comprised of \$700.00 which is double the amount of the original security deposit (2 x \$350.00), in addition to the \$50.00 filing fee.

The tenant's letter to the landlord, as above, includes a request for reimbursement of a \$5.00 overpayment in rent. However, this matter is not specifically identified in the tenant's application for dispute resolution.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$750.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: July 7, 2010

Dispute Resolution Officer