



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This is the Tenant's application a monetary order for double the security deposit paid to the Landlord; and to recover the cost of the filing fee from 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 a monetary order for double the security deposit?

Background and Evidence

The Tenant gave the following testimony:

- The Tenant provided the Landlord with the Notice of Hearing documents, by registered mail.
- The tenancy started on February 1, 2009 and ended on January 31, 2010. Monthly rent was \$1,400.00. The Tenant paid the Landlord a security deposit in the amount of \$700.00 and a pet deposit in the amount of \$200.00 in January, 2009.
- There was a Condition Inspection Report done at the beginning of the tenancy, but the Landlord did not arrange for a Condition Inspection Report to be done at the end of the tenancy.

- The Tenant gave the Landlord her written forwarding address 2 ½ months prior to the end of the tenancy.
- On February 24, 2010, the Landlord provided the Tenant with a cheque in the amount of \$538.79, representing partial return of the security and pet deposits. The Tenant still has possession of the cheque, which she did not cash.
- The Tenant did not give the Landlord permission to retain any of the security and pet deposits.

The Landlord's agent and counsel gave the following testimony:

- The Tenant damaged the walls and a window in the rental unit and did not shampoo the carpets before she moved out.
- The Landlord kept \$371.21 of the security deposit for repair of the walls and window and to clean the carpet.
- The Landlord's agent confirmed that the Tenant did not cash the partial refund cheque.
- The Landlord did not receive the Tenant's written notification of her forwarding address.

Analysis

A security deposit and pet damage deposit are 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 or pet deposit) after receipt of a tenant's 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.

There was disagreement with respect to the date the Landlord received the Tenant's forwarding address in writing, however, I find that the Landlord received the Tenant's forwarding address in writing when he received the Notice of Hearing documents and the Tenant's Application for Dispute Resolution by registered mail. The Landlord did not return all of the security deposit and pet damage deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the deposits. The Landlord is at liberty to make application for damages, should the he so desire.

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 \$1,800.00. No interest has accrued on the deposits.

The Tenant has been successful in her application and is entitled to recover the cost of the filing fee from the Landlord.

The Tenant has not cashed the Landlord's cheque in the amount of \$528.79, and I order that the Tenant return the cheque to the Landlord forthwith.

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$1,850.00. 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.

I order that the Tenant return the Landlord's cheque in the amount of \$528.79 to the Landlord forthwith.

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: August 23, 2010.

Dispute Resolution Officer