



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, FF

Introduction

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

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The Tenant paid a security deposit in the amount of \$600.00 on April 17, 2009. The tenancy started on May 1, 2009 and ended on March 31, 2010. A move out condition inspection was conducted on March 31, 2010. A copy of the Condition Inspection Report was entered in evidence. The Landlord returned \$300.00 of the security deposit to the Tenant on April 7, 2010, and kept \$300.00 for painting the rental unit. The Tenant has cashed the cheque.

The Tenant gave the following testimony:

- The Condition Inspection Report indicates that she agreed to the deduction of \$300.00 from her security deposit, but that figure was added after she signed the agreement. The Tenant did not agree to any deductions, and she left the rental unit clean and in undamaged condition at the end of the tenancy.

- The Landlord did not give her a copy of the Condition Inspection Report until she received the partial refund of her security deposit in the mail.
- The Tenant does not wish to recover double the amount of the security deposit, as is provided in Section 38(6) of the Act, and is only applying to recover the \$300.00 that was withheld by the Landlord.

The Landlord gave the following testimony:

- The Landlord agreed that the notation with respect to the deduction of \$300.00 from the security deposit was made after the Tenant signed the Condition Inspection Report. He did not refuse to give her a copy of the Condition Inspection Report and told her she could come by the office and he would photocopy it for her.
- The Tenant was a good tenant. On the day of the move out inspection, everything looked good. The Tenant had repaired some small holes in the walls and repainted over the holes, however when the paint dried, it was the wrong colour and the patches were obvious. The Landlord had to repaint the walls and only charged her for half of the cost of repainting. The Landlord also had the carpets shampooed and did not charge the Tenant for the carpet cleaning.

Analysis

Section 38(1) of the Act provides that (unless the Tenant agrees in writing that the Landlord may retain any or all of the security deposit or pet damage deposit) within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord **must** repay any security deposit or pet damage deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage 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, pet damage deposit, or both, as applicable.

The Tenant's forwarding address was provided on the Condition Inspection Report, which was done on the same day as the end of the tenancy. The Tenant did not agree in writing that the Landlord could retain any of the security deposit. The Landlord did not file an application against the security deposit, or return the full amount of the security deposit within 15 days of the end of the tenancy.

Pursuant to the provisions of Section 38(6) of the Act, the Tenant is entitled to double the security deposit, less the amount the Landlord paid on April 7, 2010 (\$900.00). However, the Tenant stated that she did not wish to recover double the security deposit, and was only applying for a monetary award of \$300.00. Therefore, I award the Tenant only the amount she has claimed. No interest has accrued on the security deposit.

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

I hereby provide the Tenant with a monetary order in the amount of \$350.00 against the Landlord.

Conclusion

I grant the Tenant a monetary order for \$350.00 against the Landlord. 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.

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: September 03, 2010.
