



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application for Dispute Resolution by the tenant seeking the return of her security deposits. The tenant gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form and make submissions to me. The landlord did not appear.

The tenant testified that the landlord was served with notice of this application and hearing by registered mail on November 21, 2010. Based on the evidence provided by the tenant, I am satisfied that the landlord was served with notice of this hearing by registered mail and I deem that the landlord received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

Issue(s) to be Decided

Has the landlord breached the tenancy agreement, *Act* and regulations entitling the tenant to the return of double her pet and security deposits?

Background and Evidence

The parties entered into one year tenancy agreement which began on June 1, 2009 and ended on May 31, 2010. The monthly rent was \$880.00. The tenant paid security deposit of \$440.00 on May 20, 2009. The tenancy ended effective May 31, 2010 at the end of the fix term.

The tenant testified that both the move in and move out condition inspections were completed with the landlord and that she provided her forwarding address in writing on May 30, 2010. The resident manager had indicated that she would receive her full damage deposit back.

The tenant testified that she only received a portion of her security deposit back from the landlord in the amount of \$165.00. The tenant provided a copy of the letter the

landlord provided which indicated that \$275.00 had been deducted from the security deposit as a penalty for breaking the lease. The tenant submitted that the lease was fulfilled.

Despite attempts to contact the landlord by e-mail the tenant has not had any further explanation from the landlord about this deduction.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I grant the tenant's application for Dispute Resolution and Order that the landlord pay the tenant double her security deposit pursuant to section 38(6) of the *Act* less the \$165.00 previously returned.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept the evidence of the tenant that the landlord received her forwarding address in writing and that the landlord did not file an application for Dispute Resolution requesting to retain the tenant's security. Contrary to the *Act* the landlord made a deduction from the tenant's security deposit without her written consent.

Having granted the tenant's application, I also grant the tenant's request to recover the filing fee paid for submitting this application from the landlord. I find that the tenant has established a total monetary claim for the sum of **\$765.00**. This sum is comprised of double the security deposit of \$440.00 plus the \$50.00 filing fee. From this sum I deduct the sum of \$165.00 which the landlord has already returned to the tenant.

Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$765.00**. This Order must be served upon the landlord. This Order may be filed with the Province 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: December 08, 2010.

Dispute Resolution Officer