



Dispute Resolution Services

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Residential Tenancy Branch

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order for double the base amount of the security deposit.

The tenant attended the conference call hearing and gave affirmed testimony, however, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on July 21, 2010, the landlord did not attend the hearing.

All evidence and testimony has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary order for return of all or part of the security deposit, or double the base amount of the security deposit?

Background and Evidence

This tenancy began on September 11, 2006 as a fixed term tenancy, which was renewed and subsequently reverted to a month-to-month tenancy. The tenancy ended on July 2, 2010 after the tenant had given proper notice to vacate the rental unit. Rent in the amount of \$2,800.00 per month was payable in advance on the 2nd day of each

month and there are no rental arrears. On September 11, 2006 the landlord collected a security deposit from the tenant in the amount of \$1,400.00.

The tenant testified that the landlord and tenant did not conduct a move-in condition inspection report at the outset of the tenancy, however the parties walked through the unit to inspect it without a written report on July 4, 2010 after the tenant had vacated the rental unit. The landlord at the time noticed a mark on the carpet and mentioned it to the tenant. The tenant then gave the landlord her forwarding address in writing on note-paper and the landlord put it in his pocket. Later that evening, the landlord's wife called the tenant and accused her of some damage, to which the tenant responded that she knew her rights and requested her security deposit. The parties have had no contact since. The tenant also testified that she has not been served with an application by the landlord for dispute resolution claiming against the security deposit, the tenant did not agree that the landlord retain any portion of it, and the landlord has not returned any portion of the security deposit to the tenant.

Analysis

The *Residential Tenancy Act* is clear with respect to the return of pet damage deposits and security deposits:

- 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.

The *Act* also states that the landlord may retain an amount from those deposits if the tenant agrees in writing or if the director orders it. Further,

- (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 or pet damage deposit.

I find that the tenancy ended on July 2, 2010; the tenant gave the landlord her forwarding address in writing on July 4, 2010. The tenant did not agree in writing that the landlord retain any portion of the security deposit, the landlord has not applied for dispute resolution claiming against the security deposit and has not returned any portion of it to the tenant. The tenant is therefore entitled to a monetary order for double the base amount of the security deposit of \$1,400.00 for a total of \$2,800.00 plus interest in the amount of \$44.58. The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby order that the landlord pay to the tenant the sum of \$2,894.58. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 09, 2010.

Dispute Resolution Officer