



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on July 29, 2010, to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service.

The tenant served the landlord at her residential address; the tenant had lived in a lower suite and the landlord lived upstairs.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2007, a deposit in the sum of \$362.50 was paid on July 1, 2007.

The tenancy ended on June 30, 2010. When the tenant gave notice ending the tenancy she provided the landlord with her forwarding address in the same letter as her notice. A copy of the letter issued to the landlord on May 30, 2010, was provided as evidence.

The tenant requested a walk-through of the unit at the end of the tenancy; a report was not completed by the landlord.

On June 30, 2010, when the landlord and tenant met, the tenant gave the landlord the keys and again provided her forwarding address in writing.

On September 10, 2010, the tenant received a cheque from the landlord in the sum of \$365.23, which included interest in the amount of \$2.73. The cheque was issued on July 12, 2010. The envelope in which the cheque was mailed was date stamped by Canada Post as September 9, 2010.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages before me.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act.

From the evidence before me and, in the absence of the landlord who was served notice of this hearing, I find that the landlord did not return the deposit until it was mailed on September 9, 2010. I based this finding on the tenant's affirmed testimony that the deposit cheque envelope was date stamped September 9, 2010 by Canada Post.

I find that the landlord had been given the tenant's forwarding address on 2 occasions; once on May 30, 2010 and again on the last day of the tenancy; June 30, 2010.

The landlord had until July 15, 2010, to return the deposit plus interest. The deposit plus some interest was returned on September 10, 2010; almost 2 months beyond that required by the Act.

From the evidence before me I find that the deposit was not returned to the tenant within 15 days of June 30, 2010, and, therefore; pursuant to section 38(6) of the Act, that the tenant is entitled to double the deposit paid in the sum of \$725.00 plus interest in the sum of \$8.21; less the sum of \$362.50 and \$2.73 interest previously paid by the landlord.

I find that the issue date of the cheque has no weight and have made this decision based on the affirmed testimony of the tenant, that the landlord did not mail the cheque until September 9, 2010.

I find that the tenant's application has merit and that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$783.21, which is comprised of double the deposit paid, interest in the sum of \$8.21 and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$783.21; less \$365.23 previously paid, for a balance owed in the sum of **\$417.98**. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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 21, 2010.

Dispute Resolution Officer