



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 and pet deposits and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the deposits paid?

Background and Evidence

The tenancy commenced on March 1, 2009 as a 1 year fixed term which then continued as a month-to-month tenancy. Rent was \$2,350.00 per month, due on the first day of each month. Pet and security deposits in the sum of \$1,175.00 each were paid on January 31, 2009.

A move-in and move-out condition inspection was completed; however the tenant testified that the copy submitted by the landlord as evidence was not given to the tenants at the start of the tenancy and is not the report that they completed with the landlord. The landlord could not recall sending the tenants a copy of the report.

A move-out inspection was completed on August 31, 2009; the last day of the tenancy; however, the tenant did not sign the report or agree to any deductions from the deposits paid.

The landlord confirmed receipt of the tenant's forwarding address, given via email sent on August 20, 2010. A copy of the email was provided as evidence in the landlord's package of documents. Both parties confirmed that email was a regular form of communication used; and this is supported by a number of emails submitted as evidence by each party.

The tenant supplied a copy of an envelope received containing return of \$1,175.00; the envelope was dated stamped by Canada Post as September 16, 2010. The landlord could not recall the date the portion of the two deposits was returned, but stated he did attempt to mail it within 15 days of August 31, 2010. The tenant and landlord agreed that a further portion of the deposits in the sum of \$830.00 was returned to the tenant in November, 2010.

The landlord did not submit a claim against the deposits within 15 days of August 31, 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. There is no evidence that the landlord provided the tenant with a copy of the move-in condition inspection completed. In this case there is no dispute related to damages before me.

I have no evidence that that landlord has repaid the deposits, in full, as required by section 38 of the Act. I find that the landlord was given the tenant's forwarding address on August 20, 2010; the tenancy ended on August 31, 2010. The landlord did not claim against the deposits paid, nor did the landlord return he deposits, in full, within 15 days of August 31, 2010.

I have based this decision on the amounts confirmed by each party has having been returned to the tenant and the evidence that showed the initial \$1,175.00 was mailed 16 days after August 31, 2010, and a further \$830.00 paid in November, 2010. Therefore, I find that the tenant is entitled to return of double the \$2,350.00 security and pet deposits paid to the landlord; less \$2,005.00 already paid to the tenant, for a balance owed in the sum of \$2,695.00.

The tenant is entitled to return of double the deposits, as the Act required the landlord to return the deposits in full, as provided by section 38 of the Act. No portion of the deposits was paid within 15 days, but even if that had occurred, the tenant would be entitled to double the total amount of the deposits paid; less any partial payment.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$4,700.00, which is comprised of double the \$2,350.00 deposits paid; less \$2,005.00 previously returned to the tenant.

Based on these determinations I grant the tenant a monetary Order for \$2,695.00. 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: January 26, 2011.

Residential Tenancy Branch