

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with the tenant's application for double return of the security deposit, and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to the above under the Act

Background and Evidence

The month-to-month tenancy began in May 2010. Monthly rent was \$630.00, and a security deposit of \$300.00 was collected. By letter dated August 31, 2010, the landlord gave notice to end the tenancy effective October 1, 2010. Thereafter, the tenant vacated the unit on September 29, 2010, and by letter dated September 30, 2010, he provided his forwarding address to the landlord. Subsequently, the tenant received repayment of his security deposit (\$300.00) plus estimated interest (\$10.00) in the total amount of \$310.00, by way of bank draft dated February 1, 2011. The tenant seeks to recover the balance owed under the Act, in addition to recovery of his filing fee.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

The attention of the parties is drawn specifically to section 5 of the Act which provides that **This Act cannot be avoided**. Further, Part 4 of the Act addresses **How to End a Tenancy**, and in particular, section 44 addresses **How a tenancy ends**.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

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.

Further, section 38(6) of the Act states:

38(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, pet damage deposit, or both, as applicable.

Based on the documentary evidence and the testimony of the parties, I find that the landlord did not either return the tenant's security deposit or file an application for dispute resolution, within 15 days after the landlord received the tenant's forwarding address in writing. Accordingly, I find that the tenant has established entitlement to the double return of his security deposit in the total amount of \$600.00 (2 x \$300.00). As the tenant has succeeded in his application I find that he has also established entitlement to recovery of the \$50.00 filing fee.

As the tenant has received \$310.00, I find he is entitled to a monetary order for the balance of \$340.00 (\$650.00 - \$310.00). Pursuant to the Residential Tenancy Branch deposit interest calculator, no interest has accrued on the tenant's security deposit.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$340.00**. Should it be necessary, this order may be served on the landlord, filed in the 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*.

DATE: February 22, 2011

Residential Tenancy Branch