



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for the return of double their security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The female Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Landlord via registered mail at the service address noted on the Application, on October 19, 2010. The Tenants submitted Canada Post documentation to corroborate this statement. The female Tenant stated that the package that was sent to the male Landlord was returned with a notation that indicated that it had been refused by the recipient. She stated that the package that was sent to the female Landlord was not returned. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlords did not appear at the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Tenants are entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The female Tenant stated that this tenancy ended on April 01, 2010; that they paid a security deposit of \$400.00; that the tenancy agreement required them to pay monthly rent of \$800.00; that the tenancy ended on September 01, 2010; that the Tenants did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The female Tenant stated that they provided the Landlord with their forwarding address in writing, on September 13, 2010, via registered mail. She cited a Canada Post tracking number to corroborate this statement.

Analysis

On the basis of the evidence provided by the Tenants and in the absence of evidence to the contrary, I find that the Tenants paid a security deposit of \$400.00; that the Landlord did not return any portion of the security deposit; that the Tenants did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

On the basis of the evidence provided by the Tenants and in the absence of evidence to the contrary, I find that this tenancy ended on September 01, 2010; and that the Tenants mailed their a forwarding address to the Landlord on September 13, 2010.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double the security deposit that was paid, plus any interest due on the original amount.

Conclusion

I find that the Tenants have established a monetary claim of \$850.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it 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: February 17, 2011.

Residential Tenancy Branch