



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with her Application, Notice of Hearing and evidence package (the “hearing package”) by registered mail on November 18, 2010. The Tenant provided a copy of an online Canada post tracking report which shows that the Landlord received the hearing package on November 20, 2010. Based on the evidence of the Tenant, I find that the Landlord was properly served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This month-to-month tenancy started in June of 1991 and ended on May 30, 2010 when the Tenant moved out. Rent was \$700.00 at the beginning of the tenancy and by the end of the tenancy was approximately \$840.00 per month. The Tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

The Tenant said she gave the Landlord her forwarding address in writing by e-mail on August 18, 2010. The Tenant said this address is the same as her address for service indicated on the Application for Dispute Resolution. The Tenant said the Landlord acknowledged that she received her forwarding address; the Tenant said she also sent the Landlord an e-mail on September 7, 2010 asking the Landlord if she wanted the forwarding address again and the Landlord sent a responding e-mail saying “she would get on it when she returned from holidays” and asked the Tenant to calculate the interest payable on the deposit.

The Tenant said she did not give the Landlord written authorization to keep the security deposit and the Landlord has not returned it to her.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

RTB Policy Guideline #17 (Set off and Security Deposit) at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit on her application, she indicated at the hearing that this was due to an oversight and that she was seeking double the amount of the security deposit as provided under s. 38(6) of the Act.

I find that the Landlord received the Tenant's forwarding address in writing on August 18, 2010 but did not return her security deposit of \$350.00. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the Tenant's security deposit or \$700.00 with accrued interest (on the original amount) of \$125.45. As the Tenant has been successful in this matter, she is also entitled pursuant to s. 72 of the Act to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$875.45** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 23, 2011.

Residential Tenancy Branch