



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with the Notice of Hearing documents and her documentary evidence by mail, sent on February 23 or 24, 2011. The Landlord testified that she received the Notice of Hearing documents and copies of the Tenant's documentary evidence on March 2 or 3, 2011. Regular mail is not an acceptable method of service under Section 89 of the Act. However, pursuant to the provisions of Section 71(2)(b) of the Act, I am satisfied that the documents were sufficiently served for the purposes of this Act.

The Landlord provided documentary evidence to the Residential Tenancy Branch on June 3, 2011, which is late evidence. The Landlord did not provide the Tenant with copies of these documents. Therefore, I have not considered this late evidence. I invited the Landlord to provide oral testimony with respect to this evidence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on February 1, 2010 and ended on January 31, 2011. Monthly rent was \$850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 at the beginning of the tenancy. The Landlord returned a portion of the security deposit to the Tenant in the amount of \$175.25, by mailing her a cheque in that amount on February 17, 2011.

The Tenant testified that there was no Condition Inspection Report completed at the beginning or the end of the tenancy. The Landlord testified that there was a Condition Inspection done at the end of the tenancy.

The Tenant testified that she gave the Landlord written notification of her forwarding address when she provided her notice to end the tenancy, on December 21, 2010. The Landlord agreed that she received the Tenant's forwarding address when the Tenant provided her notice to end the tenancy.

The Tenant testified that she did not agree that the Landlord could retain any of the security deposit. The Landlord testified that the Tenant agreed that the Landlord could deduct the amount required to clean the carpets. The Landlord stated that this occurred during a telephone conversation sometime after the end of the tenancy.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent **in writing** to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord testified that she received the Tenant's forwarding address in writing at the end of December, 2010. The tenancy ended on January 31, 2011. The Landlord did not return the security deposit or file for dispute resolution against the security deposit within 15 days of the end of the tenancy. The Landlord returned a portion of the security deposit 17 days after the end of the tenancy.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$850.00, less the \$175.25 that was returned after the 15 day period had elapsed.

The Tenant has been successful in her application and is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$724.75** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: June 07, 2011.

Residential Tenancy Branch