



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the conference call hearing, gave affirmed testimony and provided an evidence package in advance of the hearing. Despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on February 21, 2011, the landlord did not attend the conference call hearing, but provided an evidence package in advance of the hearing.

I find that the landlord has received the notice of hearing and application, however, due to his non-appearance at the hearing, the evidence package provided by the landlord cannot be considered. All other evidence and the testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2009 and ended on April 30, 2010. Rent in the amount of \$650.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On September 2, 2009 the landlord collected a security deposit from the tenant in the amount of \$325.00, and the tenant provided a copy of a receipt as evidence.

After the tenant vacated the rental unit, she told the landlord that she would return in 15 days to collect the security deposit. She went to collect it on two occasions, but on both occasions, the landlord was not there and no one answered the door.

The tenant also testified that she did not provide the landlord with her forwarding address in writing until she filed for dispute resolution and confirmed that the address in the application is her current forwarding address. The tenant did not consent to the landlord keeping any portion of the security deposit, and the landlord has not returned any portion of it to the tenant.

Analysis

The *Residential Tenancy Act* states that the landlord must return the security deposit or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. If the landlord fails to do either, the landlord must pay the tenant double the amount of the security deposit. In this case, the tenant did not provide her forwarding address in writing to the landlord, and therefore is not entitled to double recovery of the security deposit. However, the *Act* further states that:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

In the circumstances, I find that the tenant served the landlord with the Tenant's Application for Dispute Resolution on February 21, 2011, which is less than one year after the end of the tenancy, and the application clearly has the tenant's forwarding address. Therefore, I find that the right of the tenant to return of the security deposit is not extinguished, and the tenant is entitled to return of that money, and I so order.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$375.00. This

order may be filed in the Provincial Court of British Columbia, Small Claims division 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: May 02, 2011.

Residential Tenancy Branch