



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

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

Background and Evidence

This tenancy started on July 4, 2009 and ended on December 30, 2010 when the Tenant moved out. Rent was \$1,150.00 at the beginning of the tenancy and \$1,175.00 at the end of the tenancy. The Tenant paid a security deposit of \$575.00 at the beginning of the tenancy.

The Parties completed a move in and a move out condition inspection report. The Tenant wrote his forwarding address on the move out condition inspection report. The Parties agree that the Landlord kept \$420.29 of the Tenant's security deposit without his written authorization for cleaning and repair expenses. The Landlord sent the Tenant a cheque dated January 20, 2011 in the amount of \$164.70 (which included a credit of \$9.99 to reimburse the Tenant for 3 sets of keys). The Tenant said he did not cash this cheque and the Landlord admitted that it appears to have not been negotiated.

The Landlord said the Tenant admitted that he was responsible for repairing a chip in a toilet, but it had to be replaced instead and therefore he thought he could keep the security deposit to pay for that. The Tenant argued that the Landlord was supposed to provide him with estimates but never did so.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he 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.

I find that the Landlord received the Tenant's forwarding address in writing on December 31, 2010. I also find that the Landlord returned \$154.71 of the Tenant's security deposit on or about January 20, 2011 (*after the 15 days granted under s. 38(1) of the Act*) but did not have the Tenant's written authorization to keep the balance of the security deposit and did not make an application for dispute resolution to make a claim against the balance of the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must pay the Tenant compensation equal to the amount of the security deposit of \$575.00 plus the security deposit itself. As the Landlord's cheque for \$164.70 will now be stale-dated (or non-negotiable), I order the Tenant to return that cheque to the Landlord. Consequently, I find that the Tenant has made out a monetary claim for \$1,159.99. As the Tenant has been successful in this matter, he is also entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee he paid for this proceeding.

Conclusion

The Tenant's application is granted. A Monetary Order in the amount of **\$1,209.99** 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: July 20, 2011.

Residential Tenancy Branch