



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of his security deposit, doubled, for a monetary order for money owed or compensation for damage or loss, and to recover the filing fee.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act* (the “Act”) and to recover the filing fee?

Background and Evidence

Although no tenancy agreement was entered into evidence, I heard testimony that this tenancy began on May 1, 2011, ended on May 31, 2011, and a security deposit of \$170.00 was paid by the tenant on or about April 28, 2011.

The tenant gave affirmed testimony and provided evidence that he provided the landlord his written forwarding address in a letter dated June 6, 2011, sent Canada Post.

The landlord acknowledged and confirmed receiving the tenant’s letter of June 6, 2011, with the tenant’s forwarding address within a few days afterwards.

I have no evidence before me that the landlord has filed for Dispute Resolution and the landlord confirmed that he has not returned the tenant’s security deposit due to the late notice by the tenant that he, the tenant, was ending the tenancy.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the applicant/tenant bears the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

I find that the evidence, testimony and the landlord's acknowledgment supports that the tenant provided the landlord with his written forwarding address on June 7, 2011, and that the landlord has not returned the tenant's security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. [Emphasis added]

The failure to comply with this section entitles the tenant to receive double their security deposit.

The landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the tenant's written consent to retain the security deposit.

Based on the above, I find that the tenant has established a monetary claim as follows:

Security Deposit owed, doubled (2 x \$175.00)	\$350.00
Filing fee for tenant's successful application	\$50.00
TOTAL AMOUNT DUE TO THE TENANT	\$400.00

Pursuant to section 67 of the *Act*, I grant the tenant a **monetary order** in the amount of **\$400.00**.

The landlord is directed to return the tenant's security deposit, doubled, forthwith, along with the filing fee.

I am enclosing a monetary order for \$400.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

Conclusion

The tenant is granted a monetary order for \$400.00.

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: September 29, 2011.

Residential Tenancy Branch