



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return their security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of their security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement that began on November 01, 2010 that was to continue until October 31, 2011; that the Tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00; that the tenancy ended on May 31, 2011; and that the Tenant provided the Landlord with a forwarding address, in writing, on June 08, 2011.

The Landlord and the Tenant agree that the parties completed a Condition Inspection Report on November 10, 2010, at which time the male Tenant gave the Landlord written authority to retain the Tenant's security and pet damage deposit.

The Landlord and the Tenant agree that the Landlord did not return any portion of the security deposit and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00; that the tenancy ended on May 31, 2011; that the Tenant provided the Landlord with a forwarding address, in writing, on June 08, 2011: that the Landlord did not return any

portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant. While I accept that on November 10, 2010 the male Tenant gave the Landlord written authority to retain the pet damage and the security deposit, I find that this written authority was provided at the start of the tenancy, rather than at the end of the tenancy as is required by legislation. I therefore find that this authorization did not entitle the Landlord to retain the Tenant's security deposit and that the Landlord remained obligated to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit and pet damage deposit that was paid.

Conclusion

I find that the Tenant has established a monetary claim of \$3,250.00, which is comprised of double the security deposit and pet damage deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: September 23, 2011.

Residential Tenancy Branch