



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit.

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.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of her security deposit, in accordance with section 38 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 10, 2010; that the Tenant paid a security deposit of \$475.00; that the Tenant vacated the rental unit on June 26, 2011 but had the right to occupy until June 30, 2011; that the Tenant did not authorize the Landlord, in writing, to retain any portion of the security deposit; that the Landlord returned \$416.68 of the deposit to the Tenant; that the Landlord retained \$58.32 of the deposit in compensation for a hydro payment that the Landlord believed was due; and that did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she mailed her forwarding address to the Landlord, via registered mail, on July 14, 2011. The Tenant submitted Canada Post documentation that a package was mailed to the Landlord on July 14, 2011 and was delivered on July

18, 2011. The Landlord acknowledged receiving the Tenant's forwarding address by registered mail on that approximate date.

The Landlord stated that the Tenant's security deposit, less \$58.32, was mailed to the Tenant on August 01, 2011. The Tenant stated that she believes she received the cheque on August 12, 2011.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant vacated the rental unit on June 26, 2011, although she had the right to occupy the rental unit until June 30, 2011.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant mailed her forwarding address to the Landlord on July 14, 2011 and that it was received by the Landlord on July 18, 2011. On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord mailed a portion of the security deposit to the Tenant on August 01, 2011.

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. As this tenancy ended in June of 2011 and the Landlord received the Tenant's forwarding address on July 18, 2011, the Landlord was obligated to repay the full deposit or to file an Application for Dispute Resolution seeking to keep all or part of the deposit by August 03, 2011.

In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution to retain a portion of the deposit.

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.

In making this determination I note that the Tenant did not give the Landlord written permission to retain any portion of the security deposit, as is required by section 38(4)(a) of the *Act*.

Conclusion

I find that the Tenant has established a monetary claim of \$950.00, which is double the amount of the security deposit. I find that this claim must be reduced by the \$416.68 that has been returned to the Tenant.

On the basis of these calculations, I grant the Tenant a monetary Order in the amount of \$533.32. 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: October 18, 2011.

Residential Tenancy Branch