



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on August 3, 2011, to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service and during the hearing the tenant reviewed the Canada Post web site which indicated the landlord had signed, accepting the registered mail on August 19, 2011.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Preliminary Matter

The male co-tenant attended the hearing at the commencement and then exited, as he was at work.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced in March 2011; the tenants vacated at the end of May, 2011. A security deposit in the sum of \$400.00 and pet deposit in the sum of \$200.00 was paid at the start of the tenancy.

On June 18, 2011, the tenants met with the landlord and they provided him with their written forwarding address; by writing the address in a record book of the landlord's. The next day the tenants had the landlord sign a letter that included a request for return of the deposits and the forwarding address; a copy of that letter was submitted as evidence.

On August 2, 2011, the tenants submitted their application for dispute resolution.

On August 9, 2011, the landlord's receptionist went to see the female tenant at her place of work. She showed the tenant a letter with a deposit cheque that had been stapled to it; the cheque showed an issued date of August 2, 2011; with another date scratched out. The tenant was told that the cheque had been mailed but it had been returned to the landlord, as the tenant's had given an incorrect postal code.

The tenant confirmed that the postal code included on the June 19, 2011, note signed by the landlord provided the correct postal code; the same code used on the tenant's application for dispute resolution.

The tenant stated that they have not received any portion of the deposits paid. The tenants wish to claim return of the deposits based on the amount provided by the Act.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord was served with notice of this hearing, but did not attend or submit any evidence or attend the hearing.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant. When the landlord signed the note on June 19, 2011; he had no more than 15 days in which to return the deposit in full or to submit an application claiming against the deposit.

There is no evidence before me that the landlord was given an incorrect postal code that would have caused a deposit cheque to be returned by Canada Post. There is also no evidence before me that the landlord issued a cheque and sent it to the tenants before August 2, 2011. The landlord was required to return the deposits or claim against them by August 2, 2011, at the latest, but the landlord's representative did not approach the tenants until August 9, 2011. Therefore, pursuant to section 38(6) of the Act, I find

that the tenants are entitled to return of double the security and pet deposits paid; in the sum of \$1,200.00.

I find that the tenant's application has merit, and I find that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,250.00, which is comprised of double the \$400.00 security deposit and double the \$200.00 pet deposit, plus the \$50.00 in compensation for the filing fee paid by the tenants for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,250.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: November 07, 2011.

Residential Tenancy Branch