



Dispute Resolution Services

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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 tenant has 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 also claimed costs for evidence and registered mail.

Preliminary Matters

The tenant provided affirmed testimony that on September 27, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord via registered mail at the address noted on the Application. The registered mail was accepted on September 28, 2011, as indicated on the Canada Post web site tracking information supplied as evidence.

The tenant testified that he obtained the landlord's address after completing a title search with the city of New Westminster. A copy of the search results were supplied as evidence, which showed that the rental property was registered to the landlord. AS the landlord did not supply the tenants with a contact address; the address supplied on the title search was utilized for service; which was the same address as the rental unit.

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.

The tenants acknowledged their intent to claim the maximum amount allowed as provided by section 38(6) of the Act; therefore, the application was amended to include a claim in the sum of \$1,744.00.

Issue(s) to be Decided

Are the tenants entitled to return of the deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 15, 2009, rent was \$1,745.00 per month, due on the first day of each month. A deposit in the sum of \$875.00 was paid. A copy of the tenancy agreement signed by the female tenant was supplied as evidence. The male applicant signed an addendum for a tenancy that commenced on the same date; that required him to pay a portion of the total rent owed.

Condition inspection reports were not completed.

Both parties vacated the rental unit in July, 2011.

The tenants supplied a copy of an August 12, 2011, letter sent to the landlord via email and registered mail. A copy of the August 15, 2011, registered mail receipt was provided as evidence. The tenants used the address revealed by the title search. A copy of the Canada post tracking information indicated this mail was accepted on August 16, 2011. The tenant's letter requested return of the deposit and provide a forwarding address.

The tenants have not received their deposit.

The tenants claimed costs for evidence preparation on registered mail.

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 amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages.

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 tenants and sent to the landlord via registered mail on August 15, 2011. Therefore, pursuant to section 38(6) of the Act, I find that the tenants are entitled to return of double the \$872.00 deposit paid to the landlord.

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.

In relation to other costs, I dismiss that portion of the claim as the Act does not contemplate costs outside of the filing fee.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$1,794.00, which is comprised of double the \$872.00 deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,794.00. 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: December 08, 2011.

Residential Tenancy Branch