



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 provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the landlord's on-site agent, M.L. at the rental unit, on October 6, 2011. The female tenant was at her parent's home, which was next door; she was not present with the tenant handed the agent the hearing package, but she was aware the tenant had gone next door to give the agent the package. The landlord had not provided the tenant's with a service address, so they served the person who acted as agent during their tenancy.

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 Matters

The tenant's evidence package was not served to the landlord; therefore it was set aside. During the hearing the tenants read from emails that they had on their computer.

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 November 2009; rent was due on the first day of each month. A deposit in the sum of \$425.00 was paid. Condition inspection reports were not completed.

The tenants gave notice to end their tenancy, effective September 15, 2011. Initially they believed the landlord had agreed the tenants would not pay ½ September rent and the landlord could keep their deposit. When the landlord indicated he did not wish to place this agreement in writing, the tenants paid 1/2 of September rent.

The tenants sent the landlord an email on August 10, 2011; providing notice ending the tenancy. Email had been used as a method of communication between the parties, although the landlord would often follow-up via a telephone call.

On September 2, 2011, the tenants sent the landlord another email that contained their forwarding address. The tenants have a copy of that email. The landlord did speak with the tenants after this email, has not returned the deposit or made a claim against the deposit.

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 before me.

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. Therefore, I find that the tenant is entitled to return of double the \$425.00 deposit paid to the landlord.

I find, in the absence of the landlord, that the tenants and landlord did communicate via email and that the landlord was given the tenant's forwarding address sent via email on September 2, 2011.

I find that the tenant's application has merit, and I find that the tenant is 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 \$900.00, which is comprised of double the \$245.00 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 tenant a monetary Order for \$900.00. 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 16, 2011.

Residential Tenancy Branch