



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 sent to the landlord on November 3, 2011 via registered mail to the address given by the landlord as their service address at the start of the tenancy. This was also the address where the tenants paid their rent. A Canada Post tracking number and receipt was provided as evidence of service.

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.

Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 1, 2010; a deposit in the sum of \$675.00 was paid. On September 30, 2011, the tenants signed a move-out condition inspection report agreeing to a \$140.00 deduction from the deposit. The inspection report provided the tenant's forwarding address.

The tenants provided a copy of the condition inspection report, which outlined the agreement that the tenants would receive \$535.00 of their deposit.

A copy of a November 15, 2011 cheque issued to the tenants in the sum \$495.00 was provided as evidence of the amount returned to the tenants. Despite repeated attempts to discuss this with the landlord, the balance of the deposit has not been returned to the tenants. The tenants have cashed the cheque issued to them.

The tenants are requesting return of double the deposit, less the agreed upon deduction of \$140.00 and the \$495.00 previously returned to them; totaling \$715.00.

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; the tenants agreed in writing at the end of the tenancy to deductions totaling \$140.00. The landlord returned \$495.00; which differed from the agreed upon deduction by \$40.00.

I have no evidence that that landlord has repaid the balance of the deposit owed; only that the deposit, less an additional \$40.00 was returned. There is no evidence before me that the landlord submitted an application, claiming against the deposit or an Order providing the landlord with the authority to withhold more than what the tenants agreed to in writing at the end of the tenancy. Therefore, I find that the tenant is entitled to return of double the \$675.00 deposit paid to the landlord; less \$140.00 agreed to and \$495.00 returned by the landlord.

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 tenants have established a monetary claim, in the amount of \$765.00, which is comprised of double the \$675.00 deposit, less the \$140.00 agreed deduction; the \$495.00 returned by the landlord, plus the \$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 \$765.00. 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: January 23, 2012.

Residential Tenancy Branch