



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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The property owner, named on the application as a respondent, was served notice of this hearing to an address that the agent for the property owner provided by his current property management company. The tenant provided a receipt for registered mail sent on November 29, 2011; according to the Canada Post tracking information the mail was accepted.

The landlord's agent testified that they also wished to have the property owner attend the hearing and had mailed him a copy of the hearing documents to the same address used by the tenant for service.

The landlord did not attend the hearing; however, I find he was served with notice of this hearing by the tenant. The tenant used the address provided by the landlord's agent, which I find is sufficient and reliable.

The tenant agreed to remove the current property management company as a respondent to the claim.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The previous property manager provided affirmed testimony that at the start of the tenancy in December 2010, he received a deposit in the sum of \$550.00, which was transferred to the property owner. The tenant submitted a copy of a property management owner statement completed in December, 2010, as a record of the deposit, rent paid and other operating expenses for the property.

The tenant supplied a copy of a November 16, 2010 receipt issued for the deposit in the sum of \$550.00; plus a copy of her banking information showing the account activity.

A new management company took over responsibility for the property and completed the move-out condition inspection report with the tenant on March 10, 2011. There were no problems with the unit and the tenant provided her written forwarding address on the inspection report. A copy of the report was supplied as evidence.

The current property management company had not been given the deposit; it continued to be held by the property owner.

The landlord supplied copies of emails sent by the tenant in November, 2011, asking why her deposit had not been returned.

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 condition inspection report was signed indicating the unit was in good condition at the time the tenant vacated.

I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant. The property owner was served with Notice of this hearing, but did not

attend to respond to the claim. The current property management company was not given the deposit. Therefore, as I find that the previous property manager has confirmed he received the deposit and gave it to the landlord; testimony that was supported by the documentation submitted as evidence, I find that the tenant is entitled to return of double the \$550.00 deposit paid to the landlord.

I find that the tenant's application has merit and 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 \$1,150.00, which is comprised of double the \$550.00 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 \$1,150.00. 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: February 13, 2012.

Residential Tenancy Branch