



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by s. 38(1) of the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started on December 1, 2010. Rent was \$975.00 per month. The Tenant paid a security deposit of \$500.00. The Tenant said the tenancy ended on December 28, 2011 when she vacated the rental unit although she admitted that she did not finish cleaning the rental unit until January 2, 2012 and did not return the keys to the Landlord's agent until January 5, 2012. The Landlord said she only discovered that the Tenant had vacated on January 5, 2012 when she received an e-mail from the Tenant advising her that she had finished cleaning and returned the keys that day.

The Parties agree that the Tenant sent the Landlord a letter by post on January 30, 2012 which contained her forwarding address in writing. The Parties also agree that the Tenant did not give the Landlord written authorization to keep the security deposit and it has not been returned to the Tenant.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security

deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I make no finding as to the specific date the tenancy ended although I find that it had ended by January 5, 2012 *at the latest* when the Tenant returned the keys and advised the Landlord in writing. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient five days later. As a result, I find that the Landlord received the Tenant's forwarding address in writing on February 6, 2012 (given that the 4th fell on a non-mail delivery day). Consequently, ***the Landlord had until February 21, 2012 at the latest to either return the Tenant's security deposit or to file an application for dispute resolution to make a claim against the security deposit.***

I find that the Landlord did not have the Tenant's written authorization to keep the security deposit of \$500.00 and did not return it to the Tenant. I also find that the Landlord did not make an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$1,000.00 to the Tenant. As the Tenant has been successful in this matter, I also find that she is entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$1,050.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 23, 2012.

Residential Tenancy Branch