



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 a monetary order as compensation for the double return of the security deposit / and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was "successfully delivered."

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on September 1, 2008. Monthly rent of \$1,300.00 was payable in advance on the first day of each month. Later, rent was reduced to \$1,100.00, and still later, rent was lowered to \$1,060.00. A security deposit of \$650.00 was collected. A move-in condition inspection report was not completed.

Pursuant to a mutual agreement, the tenant vacated the unit on November 30, 2011, in exchange for the landlord's waiving of rent for November 2011. As the tenant had understood from an oral conversation with the landlord that he could finish cleaning and removing discarded belongings from the unit on December 1, 2011, by November 30, 2011 these tasks had not been fully completed. However, the landlord had changed the locks on November 30, 2011, and the tenant was unable to finish the clean-up in the unit on December 1, 2011. A move-out condition inspection report was not completed.

By letter to the landlord dated December 12, 2011, the tenant provided his forwarding address and requested the return of his security deposit. The landlord responded in writing by letter dated December 13, 2011, setting out various reasons why she had no intention of returning the security deposit. To date, no portion of the security deposit has been returned.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 38 of the Act addresses the **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and testimony, I find that the landlord neither returned the security deposit nor filed an application for dispute resolution within 15 days after being informed in writing of the tenant's forwarding address. Accordingly, I find that the tenant has established entitlement to the double return of the security deposit in the total amount of \$1,300.00 (2 x \$650.00). Further, I find that the tenant is entitled to interest of \$3.25 earned on the original amount of the security deposit.

As the tenant has succeeded with this application, I find that he has also established entitlement to recovery of the \$50.00 filing fee.

During the hearing the tenant inquired about amending his application to include recovery of costs related to use of registered mail. In this regard, section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's inquiry / request to amend the application is hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,353.25** (\$1,300.00 + \$3.25 + \$50.00). Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of the 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 12, 2012.

Residential Tenancy Branch