

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on November 1, 2008 and ended on November 28, 2010. Monthly rent was \$700.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$350.00 on October 7, 2008, when he signed the tenancy agreement with the Landlord. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy.

The Tenant testified that he gave the Landlord written notification of his forwarding address on December 16, 2010. The Landlord testified that he received the Tenant's forwarding address on December 24, 2010.

The Tenant did not agree that the Landlord could retain any of the security deposit. The Landlord did not return any of the security deposit to the Tenant because the Tenant was in arrears of rent payments, so the Landlord applied the security deposit towards those arrears. The Landlord has not filed an application for dispute resolution with respect to the security deposit or the unpaid rent.

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord testified that he received the Tenant's forwarding address in writing on December 24, 2010. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$700.00, plus accrued interest on the original deposit in the amount of \$1.23.

The Tenant has been successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$751.23** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 24, 2012.

Residential Tenancy Branch