



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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 within the time limits required by the Act as well as to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 22, 2012. According to the Canada Post online tracking system, the Landlord received this mail on August 23, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

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 27, 2011 and ended on June 30, 2012 when the Tenant moved out and returned the keys to the Landlord's caretaker. Rent was \$1,150.00 per month. The Tenant paid a security deposit of \$575.00 which is acknowledged on the tenancy agreement by the Landlord.

The Tenant said he gave his forwarding address in writing to the caretaker of the rental property on June 30, 2012 as instructed by the Landlord. The Tenant said that after he filed his application for dispute resolution, the Landlord sent him two cheques in the amount of \$100.00 each with a hand-written letter. In the letter, the Landlord claimed that he was retaining \$251.55 of the security deposit to pay for cleaning expenses but did not account for the balance of \$123.45. The Tenant said he has not cashed these cheques and will return them to the Landlord. The Tenant said he did not give the Landlord written authorization to keep any of his security deposit.

Analysis

Section 38(1) of the Act says that a Landlord has **15 days** from either the end of the tenancy or the date he 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 find that the Landlord received the Tenant's forwarding address in writing on June 30, 2012 but did not return any of his security deposit or apply for dispute resolution to make a claim against it within the 15 days required under s. 38(1) of the Act. I also find that the Landlord did not have the Tenant's written authorization to keep any of the security 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 \$1,150.00 to the Tenant. I also find that the Tenant is entitled to recover the \$50.00 filing fee for this proceeding.

As the Tenant was not certain whether the Landlord's cheques were negotiable or not, I Order the Tenant pursuant to s. 62(3) of the Act to return the Landlord's two cheques in the amount of \$100.00 each to the Landlord forthwith.

Conclusion

A Monetary Order in the amount of \$1,200.00 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: November 05, 2012.

Residential Tenancy Branch