



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit; for money owed or compensation for damage or loss; and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As the evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant is entitled to the return of double the security deposit and to recover the cost of filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2012; that they entered into a written tenancy agreement; that the tenancy ended on July 31, 2012; that a condition inspection report was completed at the beginning and the end of the tenancy; and the Tenant provided the Landlord with a forwarding address, via email, on August 10, 2012.

The Landlord stated that the Tenant paid a security deposit of \$640.00 and the male Tenant stated that a security deposit of \$675.00 was paid. The Tenant submitted an Application for Tenancy, which declares that the rent was to be \$1,350.00 and the security deposit was to be \$675.00. The Landlord and the Tenant agree that after this

application was completed the rent was reduced to \$1,275.00 per month. The Landlord contends that the security deposit was also reduced at that time, which the Tenant denies.

The Landlord and the Tenant agree that the Landlord returned \$313.40 of the security deposit on, or about August 20, 2012, and another \$42.50 of the security deposit on, or about August 28, 2012.

The Landlord stated that he filed an Application for Dispute Resolution claiming against the deposit on August 15, 2012, although he did not serve these documents to the Tenant and he did not participate in the dispute resolution hearing. Residential Tenancy Branch records confirm this testimony.

Analysis

I find that the Tenant has submitted insufficient evidence to establish that a security deposit of \$675.00 was paid. In reaching this conclusion I have placed no weight on the Application for Tenancy that was submitted in evidence. As the rent was reduced after the application was completed, I find it entirely possible that the security deposit would also have been reduced. I therefore find that I cannot rely on the Application for Tenancy to establish disputed terms of the tenancy. In the absence of more reliable evidence that corroborates the Tenant's testimony that a deposit of \$675.00 was paid or that refutes the Landlord's testimony that a deposit of \$640.00 was paid, I find that a security deposit of at least \$640.00 was paid.

On the basis of the undisputed evidence, I find that the Landlord filed an application to retain the security deposit on August 15, 2012, although he did not pursue that claim; and that the Landlord has returned \$355.90 of the security deposit. As the Landlord has not established a claim against the security deposit, I find that he must return the unreturned portion of the security deposit, which is \$284.10.

Section 38(1) of the *Act* stipulates that within 15 days after 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 and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord has complied with section 38(1) of the *Act*, as the Landlord made an Application for Dispute Resolution on August 15, 2012.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did comply with section 38(1) of the *Act*, I dismiss the Tenant's application for double the security deposit.

Conclusion

I find that the Tenant has established a monetary claim of \$334.10, which is comprised of the remaining \$284.10 of the security deposit and \$50.00 as compensation for the fee for filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: November 08, 2012.

Residential Tenancy Branch