



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 Dispute Resolution, in which the tenant has requested return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit; less agreed deductions?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 16, 2010; a condition inspection report was completed and a deposit in the sum of \$787.50 was paid.

The tenancy ended on October 27, 2012; a condition inspection report was not scheduled or completed; the tenant's written forwarding address was given on that date.

At the end of the tenancy the tenant had verbally agreed to several deductions from the deposit; \$124.00 for carpet cleaning and \$116.00 for painting.

On November 1, 2012 the tenant again provided the landlord with her forwarding address; the landlord had emailed asking the tenant to supply the address as they had misplaced the address given at the end of the tenancy. A copy of the email correspondence was supplied as evidence.

The tenant received a December 17, 2012 cheque in the sum of \$488.08, which she cashed.

The tenant has now agreed to an additional deduction from the deposit in the sum of \$2.28 for a metal plate, screw, and door stopper.

The landlord did not dispute the tenant's submissions; they had made additional deductions from the deposit believing that they were entitled to do so and did not return the agreed-upon amount within 15 days of October 27, 2012.

The tenant supplied copies of a number of emails sent between the parties, in relation to deductions the landlord thought should be made from the deposit.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord is also required to arrange a move-out condition inspection and to give the tenant a copy of that report; this did not occur. When the inspection was not scheduled the landlord extinguished their right to claim against the deposit and they were required to return the deposit, less any agreed deductions, to the tenant within 15 days. The tenant did not provide her written agreement for deductions at the end of the tenancy; however the landlord agreed with the facts, as presented by the tenant.

A move-out condition inspection was not completed as required by the Act; the landlord retained an amount beyond that agreed to by the tenant without obtaining an order allowing them to do so and they did not return the deposit within 15 days of the end of the tenancy. Therefore, I find that the tenant is entitled to return of double the \$787.50 security deposit paid to the landlord; \$1,575.00.

The landlord should have returned \$551.50; the amount the tenant was entitled to after the agreed deductions had been made for carpet cleaning and painting.

I find that the tenant's application has merit and that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to the following balance:

		Balance
Double the \$787.50 deposit		\$1,575.00
Less agreed upon deductions	\$242.28	\$1,322.72
Less amount returned	\$488.08	\$844.64
Plus filing fee	\$50.00	\$894.64

Based on these determinations I grant the tenant a monetary Order in the sum of \$894.64. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The tenant is entitled to return of double the security deposit; less agreed deductions.

The tenant is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 27, 2013

Residential Tenancy Branch

