



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit and to recover the fee for 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 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 her 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 in August of 2010; that the Tenant paid a security deposit of \$900.00 on July 13, 2010; that the tenancy ended in October of 2012; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit.

The Tenant stated that she sent the Landlord her forwarding address, via text message, on November 06, 2012. The Landlord stated the he received a forwarding address for the Tenant sometime in November, although he cannot recall how he received it.

The Landlord stated that after receiving the forwarding address he sent the Tenant a letter, in which he informed the Tenant he was retaining the security deposit as the Tenant had not provided him with proper notice to end the tenancy.

Analysis

Section 38(1) of the *Residential Tenancy Act (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, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposit(s).

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the tenancy ended more than fifteen days ago; the Landlord received the Tenant's forwarding address, via text message, more than fifteen days ago; the Landlord has not repaid any portion of the security deposit; the Landlord has not filed an Application for Dispute Resolution; and the Tenant did not authorize the Landlord to retain any portion of the security deposit.

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 not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

In determining this matter I have not considered whether the Tenant owes money to the Landlord for rent/loss of revenue for November of 2012, as the Landlord has not made a claim for such compensation and the Landlord did not have the right to retain the security deposit simply because he believed the Tenant owed him money for rent/lost revenue.

Conclusion

I find that the Tenant has established a monetary claim of \$1,850.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of 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: February 27, 2013

Residential Tenancy Branch