



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was an application by the tenant for the return of his security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant and the landlord participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit including double the amount?

Background and Evidence

The rental unit is an apartment in Kelowna. The tenancy began on November 1, 2011 for a one year fixed term. Monthly rent was \$1,200.00, payable on first day of each month. The tenant paid a security deposit of \$600.00 prior to the commencement of the tenancy.

The tenant moved out at the end of the term on October 31, 2012. He took part in a condition inspection with the landlord's realtor who acted as the property manager. The tenant provided his forwarding address on the condition inspection report. The landlord's agent stated an amount of \$150.00 for cleaning the rental unit on the condition inspection report. The tenant signed the report, but he did not agree to the proposed charge. He said he did not consider it reasonable because the rental unit was not properly cleaned when the tenancy started.

The tenant testified that he tried to obtain the return of his security deposit and sent the landlord several e-mails before he finally served the landlord personally with the application for dispute resolution and Notice of Hearing to claim the return of his deposit.

At the hearing the landlord said that he did not return the tenant's deposit because he claimed to be entitled to keep a portion of it for the cost of cleaning. The landlord said

that he was unaware of the provisions of the *Residential Tenancy Act* that required him to return the tenant's deposit or file an application for dispute resolution to make a claim to retain it.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenant double the amount of the security deposit.

Although the tenant did not submit documents in support of his application; at the hearing the landlord confirmed that the tenant provided his forwarding address on the condition inspection report filled out by the realtor at the end of the tenancy. I am satisfied that the tenant provided the landlord with her forwarding address in writing, and I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$1,200.00. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,250.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the 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: March 26, 2013

Residential Tenancy Branch

