



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This is the Tenant's application for double the amount of the security deposit pursuant to the provisions of Section 38(6) of the Act.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords were served with the Notice of Hearing documents and copies of the Tenant's documentary evidence by registered mail sent April 30, 2013.

The Landlord provided documentary evidence to the Residential Tenancy Branch, but did not serve the Tenant with copies. Therefore, I have not considered the Landlord's documentary evidence. The Landlord was invited to provide oral testimony with respect to this evidence.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit and compensation pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy started in April, 2011 and ended on February 28, 2013. The Tenant paid a security deposit in the amount of \$500.00 at the beginning of the tenancy. There was no condition inspection that complies with the requirements of Sections 23 and 35 of the Act and Part 3 of the regulations at the beginning or the end of the tenancy.

The Tenant provided the Landlord with her forwarding address in writing on March 15, 2013. The Landlord has not returned any of the security deposit to the Tenant.

The Landlord submitted that the Tenant did damage to the rental unit that exceeds the security deposit, but he has not filed an application for dispute resolution against the security deposit.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I accept that the Tenant provided her forwarding address in writing on March 15, 2013. The Landlord has not filed an application for dispute resolution and in any event, I find that the Landlord extinguished his right to claim against the security deposit under the provisions of Section 25(3) of the Act. However, as explained to the Landlord, he may file an application for damages under the provisions of Section 67 of the Act if he chooses to do so.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit that the Landlord withheld ($\$500.00 \times 2 = \mathbf{\$1,000.00}$).

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,000.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 22, 2013

Residential Tenancy Branch