



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute in which the tenants have requested return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

A hearing was held on July 15, 2012, at which point an interim decision, with instructions, was issued. That interim decision should be read in conjunction with this final decision.

Preliminary Matters

On July 16, 2013 the tenant supplied a copy of a text message sent to the tenant; the date is not clear, but the time of transmission was 11:47 a.m. This evidence had been requested during the hearing held on July 15, 2013.

The landlord had until July 24, 2013 to supply a response to the text message evidence that the tenant was to provide to the landlord and the RTB. On July 19, 2013 the landlord made a written submission.

Issue(s) to be Decided

Are the tenants entitled to return of the security deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

The text message evidence that the tenant supplied upon the request of the arbitrator indicated, in part:

"I think you need to read the booklet. Where is the original light fixture? We have 10 days to return your damage deposit. We do not require 24 hours notice unless we are entering the property without you being there...."

In response to the text evidence the landlord made a written submission that the tenant failed to return a light fixture. The landlord has looked at her records and found that a deposit was not paid by the tenants. The landlord states that she is relying upon her bookkeeping and that she had only responded to a message about a deposit and later found a deposit had not been paid, as she expected the tenants to purchase the rental

unit. The landlord would have claimed against the deposit if they had received a 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.

There was no dispute that the tenancy ended on February 28, 2013 and that on that date the landlord received the tenant's forwarding address.

I have considered the evidence before me and find, on the balance of probabilities, that the landlord did receive a deposit equivalent to one-half a month's rent owed; \$375.00. I have based this finding on the text messages were used as a form of written communication between the parties; which was not in dispute and the testimony of the parties.

I have also considered the credibility of the parties and have determined that the tenant's testimony carried the conviction of truth. In the circumstances before me, I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. Combined with the text message where the landlord acknowledges the deposit; I find that a deposit in the sum of \$375.00 was paid.

The landlord made submissions that the tenant owed money for damages; however, in the absence of a claim made against the deposit within fifteen days, the landlord was required to return the deposit, in full.

Therefore, pursuant to section 38(6) of the Act I find that the landlord must return double the security deposit in the sum of \$750.00.

As the tenant's claim has merit I find that the tenant is entitled to return of the \$50.00 filing fee.

Based on these determinations I grant the tenant a monetary Order in the sum of \$800.00. 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.

The tenant is entitled to filing fee costs.

This final decision should be read in conjunction with the interim decision issued on July 15, 2013.

This final 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 15, 2013

Residential Tenancy Branch

