



Dispute Resolution Services

Page: 1

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 the security deposit and to recover the filing fee from the Landlord for the cost of 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.

Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began on February 22, 2012 and that the keys to the rental unit were returned on April 30, 2013.

The Landlord stated that the Tenant paid a security deposit of \$897.50 and a pet damage deposit of \$897.50. The Tenant stated she believes they paid a security deposit of \$900.00 and a pet damage deposit of \$900.00. The security deposit that was submitted in evidence by the Tenant shows that the Tenant paid a security deposit of \$897.50 and a pet damage deposit of \$897.50.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain any portion of the security/pet damage deposit, in writing, and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit. The Landlord stated that when the rental unit was inspected on April 30, 2013 the male Tenant gave him verbal permission to retain a portion of the deposits.

The Landlord stated that he returned a portion of the pet damage/security deposits in April of 2013, although he cannot recall the exact amount. The Tenant stated that the Landlord returned \$706.66 of the deposits.

The Tenant stated that she believes the Landlord was provided a forwarding address by email, but she is not certain because it was provided by the other Tenant. The Landlord stated that he is not certain how he got the forwarding address, but he thinks the male Tenant gave it to him on a piece of paper on April 30, 2013.

Analysis

On the basis of the testimony of the Landlord and the tenancy agreement that was submitted in evidence, I find that the Tenant paid a security deposit of \$897.50 and a pet damage deposit of \$897.50. I find the Landlord's testimony in this regard more reliable than the Tenant's testimony, as it is supported by the tenancy agreement that was submitted in evidence by the Tenant.

I find that neither party is certain how the forwarding address was provided to the Landlord. On the basis of the testimony of the Landlord, I find that the Landlord received the forwarding address from the male Tenant, in writing, on April 30, 2013. I find the Landlord's testimony in this regard more reliable than the Tenant's testimony, as she was not present when the forwarding address was provided.

Section 38(1) of the *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 in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security/pet damage deposit or filed an Application for Dispute Resolution.

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 and pet damage deposit.

I note that section 38(4) of the *Act* authorizes a landlord to retain all or part of a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. As there is no evidence that the Landlord had written permission to retain any portion of the deposits, I find that this section does not apply.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion

I find that the Tenant has established a monetary claim of \$1,845.00, which is comprised of double the security deposit and pet damage deposit plus \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the \$706.66 the Tenant acknowledges has already been returned by the Landlord.

I therefore grant a monetary Order for \$1,138.34. 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: July 28, 2013

Residential Tenancy Branch