



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail, at the service address noted on the Application, on June 11, 2013. The Tenant submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Is the Tenant is entitled to the return of double the security deposit and for painting the rental unit?

Background and Evidence

The Tenant stated that this tenancy began on September 01, 2006; that it ended on August 31, 2013; that she paid a security deposit of \$350.00 on September 01, 2006; that the Landlord was provided with a forwarding address, in writing, on April 01, 2013; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.; that on July 16, 2013 she received a cheque in the mail, in the amount of \$363.34, which represented the return of her security deposit; and that she has cashed that cheque.

The Tenant stated that sometime in 2010 the Landlord asked her to paint the rental unit; he told her that she would be paid for the cost of the paint and for her labour; that she

did paint the rental unit; that the Landlord told her that she could reduce her rent by \$300.00 per month until the cost of the painting had been recovered; that she does not know why she did not simply reduce her rent after the unit was painted; and that the Landlord has only paid her \$200.00.

Analysis

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 plus interest or make an application for dispute resolution claiming against the deposits. On the basis of the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not filed an Application for Dispute Resolution and the Landlord did not return the security deposit until after the 15 day time limit.

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, plus any interest due on the original amount.

I only have jurisdiction to enforce the *Act* and terms of the tenancy agreement. I find that I do not have jurisdiction to enforce an employment contract that the parties agreed to after the start of the tenancy, even if there was an agreement that payment would be made by reducing the rent. I therefore decline jurisdiction on the claim for painting.

As the Tenant's Application for Dispute Resolution has merit, I find that the Tenant is entitled to recover the fee paid for filling this Application.

Conclusion

The Tenant has established a monetary claim of \$761.20, which is comprised of double the security deposit, \$11.20 in interest on the original amount of the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. This amount must be reduced by the \$363.34 that has already been refunded to the Tenant, leaving a balance of \$397.86, and I grant the Tenant a monetary Order in this 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: September 20, 2013

Residential Tenancy Branch

