



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit and the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 24, 2013. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on July 15, 2012 as a fixed term tenancy for 12 months with an expiry date of July 14, 2013. Rent was \$1,350.00 per month payable in advance of the 15th day of each month. The Tenant paid a security deposit of \$675.00 in advance of the tenancy.

The Tenant said that they gave the Landlord proper Notice that they were moving out of the rental unit and the Landlord agreed to an early move out. The Tenant said they moved out of the rental unit on July 1, 2013 and gave the Landlord a forwarding address in writing on July 1, 2013. The Tenant said she was no move in condition inspection done and although both the Landlord and the Tenant tried to do a move out condition inspection it did not happen. The Tenant continued to say that she cleaned the unit before leaving and she asked the Landlord for her security deposit back.

The Tenant also requested to recover the filing fee for this application of \$50.00 and the cost of mailing the Hearing package to the Landlords in the amount of \$9.60.

The Landlord agreed that no move in or move out condition inspection reports were completed. As well the Landlord said the unit was left in poor condition and after they had cleaned the rental unit they returned \$575.00 of the Tenant's security deposit and retained \$100.00 of the security deposit to cover cleaning expenses. The Landlord said they sent the cheque to the Tenant by registered mail on July 30, 2013.

The Tenant said they received the cheque from the Landlord for \$575.00, but they have not cashed it as they knew this proceeding was taking place.

Analysis

Section 23 of the Act says that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start the tenancy then the landlord cannot establish the amount of damage or if any damage was done to the rental unit.

Further section 24 of the Act says that the Landlord's claim against a Tenant's security deposit is extinguished if a move in condition inspection is not completed as required by the Act.

I find the Landlord's claim against part or all of the Tenant's security deposit was extinguished because the Landlord did not complete a move in condition inspection report as required to by the Act.

In addition section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find that the Tenant did give the Landlord a forwarding address in writing on July 1, 2012. The Landlord did not repay the full security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$675.00 in the amount of $\$675.00 \times 2 = \$1,350.00$ less the amount sent by the Landlord to the Tenant as partial return of the security deposit in the amount of \$575.00.

The Tenant has requested mailing costs for the hearing, but as these costs are not an eligible claim as these costs are not deemed as part of the tenancy, but as a cost hearing process. I dismiss the \$9.60 claim for mailing costs.

As the Tenant was successful in this matter I further order the Tenant to recover the filing fee of \$50.00 from the Landlords. Pursuant to section 38 and 67 a monetary Order for \$825.00 will be issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$1,350.00 plus the filing fee of \$50.00 less the payment of \$575.00 the Landlord has already sent the Tenant:

	Double the security deposit	\$1,350.00
	Filing Fee	\$ 50.00
Less	Security deposit returned to date	\$ 575.00
	Balance owing to the Tenant	\$825.00

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 & 72 of the Act, I grant a Monetary Order for \$825.00 to the Tenant. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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: October 30, 2013

Residential Tenancy Branch