



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; OLC; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of his documentary evidence by registered mail at the beginning of October, 2013. It was also determined that the Landlord sent the Tenant her documentary evidence by registered mail at the end of October, 2013.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy ended on July 15, 2013. The Tenant paid a security deposit in the amount of \$450.00 in June, 2011.

No condition inspections were done at the beginning or the end of the tenancy. The Tenant testified that the Landlord decided to keep some of the security deposit without his consent. The Tenant testified that the Landlord returned \$200.00 to the Tenant on July 17, 2013. He stated that he mailed the Landlord written notification of his forwarding address on July 23, 2013, but that he has not received the balance of the security deposit in the amount of \$250.00.

The Landlord stated that the rental unit was completely renovated just before the Tenant and his family moved in. She testified that the Tenant caused damage to the rental unit and provided photographs of the damage in evidence. The Landlord has not filed an application for dispute resolution with respect to 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.

The Landlord did not dispute that she received the Tenant's forwarding address in writing by mail. Service in this manner is deemed to be effective 5 days after mailing the document, in this case July 28, 2013. The Landlord returned a portion of the security deposit to the Tenant on July 17, 2013; however, I find that the Landlord did not have a right under the Act to retain \$250.00 of the Tenant's security deposit. The Landlord did not file an application for dispute resolution against the security deposit.

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 ($\$250.00 \times 2 = \textbf{\$500.00}$).

The Tenant has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlord retains the right to file an application for damages under Section 67 of the Act, if she so desires.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$550.00** 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: December 10, 2013

Residential Tenancy Branch

