



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for return of the security deposit; 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 her documentary evidence by registered mail on September 7, 2013. The Tenant provided a copy of the registered mail receipt and tracking number in evidence.

The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The parties agreed on the following facts:

- The Tenant paid a security deposit in the amount of \$625.00 shortly before the tenancy began in July, 2012.
- The tenancy ended on April 30, 2013.
- The Landlord received the Tenant's forwarding address in writing on May 27, 2013.
- No Condition Inspection Report that complies with the provisions of Section 20 of the Residential Tenancy Act Regulation was completed at the beginning or the end of the tenancy.

The Tenant and the co-tenant gave the following testimony:

At the end of the tenancy, the Tenant left the rental unit clean and undamaged except for a small crack in the bathroom sink where she had accidentally dropped a glass.

The co-tenant attempted to contact the Landlord a number of times by phone after the tenancy ended, but the Landlord would not reply to his messages.

The Tenant gave her new address at the Hearing.

The Landlord gave the following testimony:

The Landlord did not return any of the security deposit to the Tenant because the Tenant caused the following damage to the rental unit:

- Damage to the sink
- Damage to the south side door
- 3 blinds were damaged and removed
- The rental unit required additional cleaning
- Garbage was left in the attic, which had to be taken to the dump

In addition, the Landlord incurred costs of \$90.00 over the term of the tenancy for NSF rent cheques.

The Landlord has receipts totaling \$699.68 which is more than the amount of the security deposit. The Landlord has not filed an Application for Dispute Resolution against 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.

In this case, the Landlord received the Tenant's forwarding address in writing on May 27, 2013. The Landlord did not file an Application for Dispute Resolution against the security deposit, or return the Tenant's 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 ($\$625.00 \times 2 = \mathbf{\$1,250.00}$).

The Tenant has been successful in her application and I find that she 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 he so desires.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,300.00** 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

