



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 Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she attempted to serve the Landlord with the Notice of Hearing documents and copies of her documentary evidence, by handing the documents to the Landlord at the rental property. She stated that the Landlord refused to accept the papers, so she sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail, sent on October 24, 2013. The Tenant provided the tracking number. She stated that the documents were returned to her, "unclaimed".

I find that the Landlord has been duly served with the Notice of Hearing documents by registered mail, pursuant to the provisions of Section 89(1)(c) of the Act. The Hearing continued in the Landlord's absence.

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 Tenant gave the following testimony:

The rental unit is an upper suite in the Landlord's house. The Landlord resides in the lower suite. This tenancy started on February 1, 2013 and ended on July 31, 2013. The Tenant paid a security deposit in the amount of \$650.00 and a pet damage deposit in the amount of \$200.00 at the beginning of the tenancy.

The parties did a “walk through” of the rental unit at the beginning and the end of the tenancy. The Tenant did not sign an inspection report, nor did the Landlord provide her with a copy of a condition inspection report.

The Tenant gave the Landlord her forwarding address on or about September 9, 2013. On September 17, 2013, the Tenant received a cheque in the amount of \$63.02 from the Landlord, representing the balance of the deposits after deducting money for damages that the Landlord believed the Tenant was responsible for. A list of the damages accompanied the cheque. A copy of the cheque and the list were provided in evidence.

The Tenant stated that she does not agree that she is responsible for any of the items that the Landlord is claiming and never agreed that the Landlord could withhold any of the security deposit or the pet damage deposit.

The Tenant testified that she has not cashed the cheque and that she returned it to the Landlord.

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.

Based on the undisputed affirmed testimony of the Tenant, I find that the Landlord received the Tenant’s forwarding address on or about September 9, 2013. The Landlord returned a small portion of the deposits to the Tenant at her forwarding address on September 17, 2013. I find that the Landlord did not have a right under the Act to retain any of the Tenant’s security or pet damage deposits. The Landlord did not file an application for dispute resolution against the deposits within 15 days of receipt of the Tenant’s forwarding address, and has not filed one to date.

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. I find that the Landlord returned a portion of the deposits within the 15 days allowed

under the Act; therefore, I do not double that amount. The Tenant has returned the cheque to the Landlord, and therefore, I have added in on to the amount owed to the Tenant after doubling the unreturned portion of the deposits.

I find that the Tenant is entitled to a monetary order, calculated as follows:

Total deposits	\$850.00
Less amount returned on September 17, 2013	<u>-\$63.02</u>
Subtotal	\$746.98
Doubled	<u>x 2</u>
Subtotal	\$1,573.96
Plus \$63.02 returned to Landlord	<u>+63.02</u>
TOTAL	\$1,636.98

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 she so desires.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,686.98** 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: February 03, 2014

Residential Tenancy Branch

