



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit, compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on November 7, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenants in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of double the security deposit?
2. Is there a loss of damage and if so how much?
3. Are the Tenants entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on October 1, 2007 as a month to month tenancy. Rent was \$975 at the start of the tenancy and the Tenant said the rent was over \$1,000 at the end of the tenancy. Rent was paid on the 1st day of each month. The Tenant paid a security deposit of \$487.50 on October 1, 2007. The Tenancy ended on June 30, 2013.

The Tenant said that a move in and move out condition report was completed at the start and at the end of the tenancy. During the move out condition inspection report the Tenant said they did not agree with the report, which said there was damage to the drapes and that the Landlord was retaining \$225.00 of the Tenants’ security deposit. As well the Tenant said she gave the Landlord her forwarding address on that report dated July 2, 2013. The Tenant continued to say the Landlord applied for dispute resolution to retain part of the Tenants’ security deposit and a hearing was held on October 21, 2013.

The Tenant said the Landlord did not appear at the hearing and the application was dismissed without leave to reapply.

The Tenant continued to say that the Landlord did send the Tenant two cheques, one for \$262.50 on July 8, 2013 and the second cheque for \$225.00 on December 2, 2013. The Tenant said she has not cashed either cheque as she wanted to have this hearing before she did anything with the cheques. The Tenant said there was no damage to the renal unit and she is now applying for double her security deposit as indicated in the Act.

The Landlord said the previous agent for the Landlord missed the previous hearing due to a pregnancy issue and she does not know the file well enough to dispute anything the Tenants are saying. The Landlord said she is not disputing what the Tenants have said.

Analysis

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 from that the Tenant did give the Landlord a forwarding address in writing on July 2, 2012. The Landlord did not repay 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, but the Landlord did apply for dispute resolution prior to July 17, 2013. In this situation the Landlord's application was unsuccessful because they did not appear at the hearing therefore the Landlord's claim on the Tenants' security deposit was extinguished and the Landlord had 15 days from that hearing date to return the Tenants full security deposit of \$487.50. The hearing was on October 21, 2013 therefore the deposit would have to have been returned by November 5, 2013. The Landlord did return the balance of the deposit on December 2, 2013 which was past the time limit of November 5, 2013. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$487.50 in the amount of $\$487.50 \times 2 = \975.00 plus accrued interest on the original security deposit amount of \$487.50 in the amount of \$9.18.

As the Tenant was successful in this matter I further order the Tenant to recover the filing fee of \$50.00 from the Landlord. Pursuant to section 38, 67 and 72 a monetary order for \$1,034.18 has been issued to the Tenant.

Double the security deposit	\$975.00	
Accrued interest	\$ 9.18	
Filing Fee	\$ 50.00	
Sub total		\$1,034.18
Balance owing to the Tenant		\$1,034.18

The Tenant and Landlord can use the previously issued cheques to the Tenant as partial payment of the award or the Landlord can issue a new payment for the total amount owing.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$1,034.18 to the Tenant. The order must be served on the Respondent 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: February 18, 2014

Residential Tenancy Branch

