



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that on May 23, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that sometime in early September of 2014 additional documents were mailed to the Landlord. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted no evidence in regards to these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Background and Evidence

The Landlord and the Tenant agree:

- that a security deposit of \$345.00 was paid
- that this tenancy ended on April 30, 2014
- that the rental unit was vacated on April 29, 2014
- that a forwarding address was written on the condition inspection report on April 29, 2014
- that the Tenant did not authorize the Landlord to retain the security deposit

- that the Landlord mailed a cheque for \$345.00 to the Tenant on May 28, 2014, which represented a full refund of the security deposit
- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord with the initials "B.R." stated that the Landlord did not intentionally delay the return of the security deposit and that the delay was the result of human error. He noted that on May 14, 2014 the Landlord offered to personally deliver the refund but the Tenant asked for it to be mailed.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not mail the security deposit refund until May 28, 2014, which is more than 15 days after the tenancy ended and the forwarding address was received, and the Landlord did not file an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

In determining this matter I note that I did not find that the Landlord acted with malice. The provisions of section 38(6) of the *Act*, however, apply even if the delay in returning the security deposit is the simply result of a lack of diligence on the part of the Landlord.

I find that that the Tenant's Application for Dispute Resolution has merit and that she is entitled to recover the fee for filing the Application.

Conclusion

The Tenant has established a monetary claim of \$740.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the \$345.00 that has already been returned to the Tenant and I am therefore issuing a monetary Order in the amount of \$395.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: September 29, 2014

