



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bc IMC Realty Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double 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 served the Landlord with the Notice of Hearing documents and copies of his documentary evidence by hand delivering the documents to the Landlord's agent at the Landlord's place of business.

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 began on August 1, 2013 and ended on July 31, 2014. The Tenant paid a security deposit in the amount \$687.50 at the beginning of the tenancy.

The parties completed a Condition Inspection Report at the beginning and the end of the tenancy. A copy of the Report was provided in evidence. The Tenant provided the Landlord with his forwarding address on July 31, 2015.

The Tenant testified that the Landlord has not returned the total amount of the security deposit and that he did not give the Landlord permission to retain any of the security deposit. He stated that he received \$150.95 from the Landlord, which he has cashed, but he was not certain when he received it. He stated that for the purposes of determining when he received the partial payment, he was satisfied that he received it within the 15 days allowed under Section 38(1) of the Act.

The Landlord's agent YT stated that the agent who was dealing with the Tenant, SP, was no longer working for the Landlord. YT testified that SP was not aware of the 15 day rule.

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 mailed a portion of the security deposit to the Tenant within the 15 day time limit to do so. However, I find that the Landlord did not have a right under the Act to retain \$536.55 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 ($\$536.55 \times 2 = \mathbf{\$1,073.10}$).

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 it so desires.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,123.10** for service upon the corporate 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: April 14, 2015

Residential Tenancy Branch

