



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 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 hand delivered the Notice of Hearing documents to the Landlord on February 12, 2015. It was also determined that the Landlord hand delivered copies of her documentary evidence to the Tenant on or about April 22 or 23, 2015.

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 ended on December 31, 2014. The Tenant paid a security deposit in the amount of \$650.00. A condition inspection was completed at the end of the tenancy and the Tenant provided his forwarding address on December 31, 2014.

On January 29, 2015, the Landlord provided the Tenant with a partial refund of the security deposit in the amount of \$284.00. The Landlord testified that she had sent a cheque on January 12, 2015, but it "went missing, lost in the mail", so she put a stop payment on it and issued a new one. The Tenant stated that he did not give permission for the Landlord to keep any of the security deposit for damages.

The Landlord has not filed an Application for Dispute Resolution with respect to 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.

I find that the Landlord did not have a right under the Act to retain any 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, less the amount that the Landlord returned to the Tenant on January 29, 2015 ($\$650.00 \times 2 - \$284.00 = \$1,216.00$).

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 she so desires.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,266.00** 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: May 27, 2015

Residential Tenancy Branch

