



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on June 20, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application 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 Landlord stated that on June 20, 2016 he submitted one page of evidence to the Residential Tenancy Branch. He stated that he did not serve this document to the Tenant. As the Landlord's evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Rule 2.2 of the Residential Tenancy Branch limits the issues that can be discussed at a hearing to issues that are identified on the Application for Dispute Resolution. As the Landlord has not claimed compensation for damage to the rental unit and the condition of the rental unit is not directly relevant to section 38 of the Act, neither party was permitted to give evidence regarding the condition of the rental unit at the end of the tenancy.

The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for damage to the rental unit.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Tenant and the Landlord agree that:

- the tenancy began on August 01, 2015;
- a security deposit of \$540.00 was paid;
- this tenancy ended on May 31, 2016;
- the Tenant provided a forwarding address, in writing, on May 30, 2016 or May 31, 2016;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- the Landlord mailed a cheque for \$285.00 to the Tenant, which was dated June 01, 2016.

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 or file 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 has not repaid the full security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received, in writing.

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.

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

Conclusion:

The Tenant has established a monetary claim of \$1,180.00, which includes double the security deposit and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution. This award must be reduced by the \$285.00 that was returned to the Tenant after the tenancy ended.

The Tenant is granted a monetary Order for the balance of \$895.00. In the event 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: December 20, 2016

Residential Tenancy Branch