Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double his security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The hearing was originally scheduled for November 27, 2008. At the beginning of the hearing on November 27, 2008 the Tenant stated that he had not served the Landlord with notice of the dispute resolution hearing. That hearing was adjourned to provide the Tenant with the opportunity to serve the Landlord with proper notice of the hearing.

The original hearing was re-scheduled for December 16, 2008. In a letter dated December 01, 2008, the Landlord requested an adjournment of the hearing on December 16, 2008 due to the fact that he would be out of town on vacation. The Tenant attended the hearing on December 16, 2008, although the Landlord did not. The hearing on December 16, 2008 was adjourned on the basis of the written request submitted by the Landlord.

The hearing was again re-scheduled for January 19, 2009. Both parties were sent a Notice of Hearing for the new hearing date by the Residential Tenancy Branch. The Tenant attended the hearing on January 19, 2009 but the Landlord did not. As the

hearing on December 16, 2008 was adjourned at the request of the Landlord, I find that it was not necessary for the Tenant to serve the Landlord with notice of the date of the new hearing. This hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Tenant stated that this tenancy began on May 04, 2004; that the parties did not have a written tenancy agreement; that the Tenant paid monthly rent of $520.00 at the beginning of the tenancy; that the Tenant believes he paid $575.00 monthly rent at the end of the tenancy, although he is uncertain of the exact amount; that the tenancy ended on September 30, 2008; that he placed a note with his forwarding address in the Landlord's mail box on September 30, 2008; that the Tenant paid a security deposit of $260.00 on May 04, 2004; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not return the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

In the absence of evidence to the contrary, I find that the parties had a tenancy agreement that ended on September 30, 2008; that the Tenant placed a note with his forwarding address in the Landlord's mail box on September 30, 2008; that the Tenant paid a security deposit of $260.00 on May 04, 2004; that the Tenant did not authorize

the Landlord to retain any portion of the security deposit; that the Landlord did not return the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit. I have no evidence to show that the Landlord had any lawful authority to retain any portion of the security deposit.

Section 38(1) of the *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. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord did not repay the security deposit or file an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), 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 that was paid, plus interest on the original amount.

Conclusion

I find that the Tenant has established a monetary claim of $579.20, which is comprised of double the original security deposit, $9.20 in interest on the original amount of the security deposit, and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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.

Dated: January 19, 2009