



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to a monetary Order for return of the deposit paid and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy commenced on July 1, 2007 and terminated on November 30, 2008. The Tenant paid a security deposit of \$675.00 on June 22, 2007.

The Tenant testified that the landlord was aware that mail could be sent to the Tenant's place of business and that at the end of the tenancy the Landlord failed to return the full deposit paid. The Tenant testified that she did provide the Landlord with a note prior to the end of November, indicating where the deposit could be sent. The Tenant stated that subsequently she made three calls to the Landlord and that in February 2009 she received a cheque in the sum of \$118.20 from the Landlord.

The Tenant has made application for return of double her deposit paid.

The Landlord submitted a copy of a move-out condition inspection completed between the parties, which is initialed by the Tenant. This report indicates that there was cleaning required to the rental unit. The report does not include a signature by the Tenant agreeing to any deduction from the deposit paid.

The Landlord testified that she had received a number of calls from the Tenant and that on January 30, 2009 the Tenant provided the Landlord with a forwarding address where the deposit could be mailed. The Landlord provided a copy of the Tenant's resident ledger which indicates that a move-out refund payout in the sum of \$118.20 was approved on November 30, 2009 and that a cheque was paid out on February 13, 2009.

The Tenant witness testified that he knows the Tenant made contact with the Landlord a number of times after the end of the tenancy. The witness also commented on the matters related to the state of the rental unit.

The Landlord testified that she did know the Tenant's work address but hesitated to send a cheque to the Tenant at that address as it is a business and she could not be sure the Tenant would receive the cheque. The Tenant testified that the Landlord knows that this business is co-owned by the Tenant and that she would have received the cheque.

The Landlord testified that deductions were made from the deposit to cover the cost of cleaning.

There is disagreement between the parties in relation to damages, the need for carpet cleaning and the state of the rental unit at the end of the tenancy. The Landlord has not made application for dispute resolution for damages or loss and I did not consider any testimony related to those matters.

Analysis

Section 38 of the Act determines that the Landlord must, within 15 days after the later of the date the tenancy ends and the date the Landlord received the Tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the Landlord has failed to comply with section 24(2) (landlord failure to meet start of tenancy condition report requirements) or 36 (2) (landlord failure to meet end of tenancy condition report requirements) the Landlord must pay double the deposit.

There is evidence that an end of tenancy condition report was completed and initialed by the Tenant. On November 30, 2009 the Landlord did enter a deposit return approval on the resident ledger in the sum of \$118.20 and I have accepted that the deposit cheque of \$118.20 was provided to the Tenant on February 13, 2009.

The Tenant testified that at the end of November 2008 she provided the Landlord with written notice of her forwarding address. I have considered the Landlord's testimony that they did have a business address and I accept the Landlord's testimony that they had not been provided with a written request by the Tenant indicating a forwarding address. I find that if the Landlord had been given a written forwarding address the Tenant would have been provided with a cheque in the sum of \$118.20; the amount of the approved payout indicated on the Tenant's resident ledger dated November 30, 2008. The Landlord testimony indicates that the Landlord did believe the Tenant was entitled to the return of a portion of the deposit and this belief, on the balance of

probabilities, leads me to accept that the Landlord did not intentionally withhold return of the deposit.

I have no evidence before me that the Tenant ever provided the Landlord with a written forwarding address. During the hearing the Tenant testified that at the end of the tenancy the Landlord was aware of her business address and later in the hearing the Tenant stated that she did provide a written forwarding address at the end of the tenancy. The Tenant did not supply a copy of the note she stated was given to the Landlord at the end of the tenancy. I find that it is unlikely the Landlord would retain an amount of \$118.20, which was considered by the Landlord as the amount owing to the Tenant. The Landlord testified that on January 30, 2009 she did receive a forwarding address, although this was not in writing, and that a cheque was provided to the Tenant within fifteen days.

Therefore, I find that the Tenant is entitled to return of the balance of her deposit, plus interest paid. As the Tenant has not provided evidence that the Landlord was provided with a written forwarding address as required by section 38 of the Act, I find that the Tenant is not entitled to return of double the deposit.

The deposit plus interest calculated to the day of this decision is \$690.56. The landlord has repaid \$118.20 and continues to hold a balance of \$572.36 in trust.

I find that the Tenant's application has partial merit, and I find that the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of **\$622.36**, which is comprised of \$572.36 deposit plus interest and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for **\$622.36**. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated June 23, 2009.

Dispute Resolution Officer