



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD

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.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on November 9, 2010, to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service.

These documents are deemed to have been sufficiently served within a reasonable period of time, in accordance with section 89 of the Act, however the landlord did not appear at the hearing.

Preliminary Matter

The Application was amended to include a claim for filing fee costs, as indicated in the details of the dispute.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on June 15, 2010; rent was \$1,300.00 per month. A copy of a receipt issued on May 28, 2010, was supplied as evidence, which indicated payment of one half one month's rent of \$650.00, plus the deposit in the sum of \$650.00.

The rental unit was a basement suite; the landlord lived upstairs.

The tenant gave the landlord verbal notice that she would move out. The tenant paid September rent owed and was then given a refund of one half of the September rent that had been paid, as the landlord located a new occupant effective September 15, 2010.

The tenant supplied a copy of a letter sent to the landlord on October 1, 2010, which included a request for return of the deposit, information on the requirements of the Act in relation to the deposit and the tenant's written forwarding address. This letter was sent to the landlord's address, via registered mail, on October 1, 2010. The landlord did not retrieve the mail.

The tenant has not received the deposit.

Analysis

Section 38(1) 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 does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages before me.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant. I find, pursuant to section 90 of the Act, that the registered mail was served to the landlord on the fifth day after mailing. A respondent may not avoid service of documents, by refusing to accept registered mail.

Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the \$650.00 deposit paid to the landlord.

I find that the tenant's application has merit and 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 \$1,350.00, which is comprised of double the \$650.00 deposit 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 \$1,350.00. 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.

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: March 03, 2011.

Residential Tenancy Branch