



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application for Dispute Resolution by the tenant seeking the return of her security deposit and recovery of the filing fee.

The hearing process was explained to the parties. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

Issue(s) to be Decided

Has the landlord breached the tenancy agreement, Residential Tenancy Act (the “Act”) and regulations entitling the tenant to the return of double her security deposit and to recover the filing fee?

Background and Evidence

This tenancy began on September 1, 2010, and ended on April 30, 2011, monthly rent was \$490.00 and the tenant paid a security deposit of \$245.00 on September 1, 2010.

The tenant testified that the landlord was firstly verbally provided, and secondly that a written forwarding address was provided to the landlord in a letter dated June 22, 2011.

The testimony and evidence of the landlord indicated that upon learning of the tenant’s forwarding address on or about June 30, 2011, she prepared a letter outlining the deductions she would make from the tenant’s security deposit, and included that, along with a cheque in the amount of \$155.61 by registered mail sent to the tenant, on July 5, 2011.

The envelope containing the July 5, 2011, letter and the tenant’s cheque was later returned to the landlord, as the mail went unclaimed.

Upon query, the landlord acknowledged that she knew the tenant had another forwarding address upon receiving the tenant's application and hearing package and that she has not made further attempts to return the tenant's security deposit cheque.

Upon query, the landlord acknowledged there is no condition inspection report.

In response, the tenant stated that the address provided to the landlord, her former co-tenant's address, was still a good address, but that the co-tenant was out of town at the time and that it was then too late to claim the mail upon returning.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I grant the tenant's application for Dispute Resolution and Order that the landlord pay the tenant double her security deposit pursuant to section 38(6) of the *Act*.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept the evidence of the tenant and the confirmation by the landlord that the landlord received her forwarding address and that the landlord did not file an application for Dispute Resolution making a claim against the tenant's security deposit. In contravention of the *Act* the landlord made a deduction from the tenant's security deposit without her written consent prior to returning a portion of the security deposit.

Having granted the tenant's application, I also grant the tenant's request to recover the filing fee paid for submitting this application. I find that the tenant has established a total monetary claim for the sum of **\$540.00**, comprised of double the security deposit of \$245.00 plus the \$50.00 filing fee.

Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$540.00**.

I am enclosing a monetary order for \$540.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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: November 02, 2011.

Residential Tenancy Branch