



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 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. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The tenant stated he received only 2 of the 26 photographs submitted as late evidence; this evidence was given to the Residential Tenancy Branch on July 19, 2012. As the evidence was not submitted at least 5 days prior to the hearing it was set aside and not referenced.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

This fixed term tenancy commenced in November 2011 and the tenant vacated at the end of the term, April 29, 2012. A copy of the signed tenancy agreement was not supplied as evidence.

A deposit in the sum of \$400.00 was paid. The landlord confirmed that move-in and move-out condition inspection reports were not completed.

The landlord confirmed receipt of an April 30, 2012, letter, given to the landlord's daughter on April 30, 2012. The tenant delivered the letter, which requested return of the deposit and provided the forwarding address for the tenant.

The landlord confirmed that he did not return the deposit as the tenant had caused damage to the unit.

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 the landlord has not made a claim against the damage deposit.

The landlord confirmed that move-in and move-out condition inspection report were not completed as required by the Act. The landlord confirmed he has not returned the deposit as requested in writing by the tenant. Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the \$400.00 deposit paid to the landlord.

I find that the tenant's application has 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 \$850.00, which is comprised of double the \$400.00 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 \$850.00. 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: July 20, 2012.

Residential Tenancy Branch