



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for return of double the security deposit plus interest, the amount equivalent of one month's rent as a result of the landlord giving notice to end the tenancy, and recovery of the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on January 22, 2009. The landlord was deemed to be served the hearing documents on January 27, 2009, the fifth day after they were mailed.

No one attended for the respondent landlord, despite being served the hearing documents.

Both tenants appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenants are entitled to receive double the amount of the security deposit, plus interest, pursuant to section 38(6)(b) of the *Residential Tenancy Act*.

- Whether the tenants are entitled to a monetary claim equivalent to one month's rent under section 67 of the *Residential Tenancy Act*.
- Whether the tenants are entitled to recover the filing fee from the landlord for the cost of the dispute resolution application, section 72(1) of the *Residential Tenancy Act*.

Background and Evidence

The rent was \$900.00 per month for a month to month tenancy which commenced on October 1, 2007 and ended on December 31, 2008. A security deposit of \$450.00 was paid to the landlord on October 1, 2007.

The landlord served the tenants on November 29, 2008 with a two month notice to end tenancy for landlord's use of the rental unit.

The tenants served the landlord on December 21, 2008 by hand, with 10 days written notice to end tenancy effective December 31, 2008.

The tenants testified that a move out inspection was conducted by the landlord on December 31, 2008, with the landlord and tenants present. The tenants stated that they have not yet received a copy of the move out inspection report despite their requests for a copy.

The tenants entered into evidence letters in support of the condition of the rental unit at the time of move out, proof that a forwarding address was submitted to the landlord on December 31, 2008, written request for the return of their damage deposit, and request for the payment equivalent to one month's rent in response to the landlord ending the tenancy agreement.

Analysis

I find that in order to justify payment of damages under sections 38 and 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

Double the security deposit plus interest - \$908.47. – Based on the evidence submitted of the Landlord's personal cheque #082 of \$460.00, dated 31/01/2009 and post marked 09/02/02, I find that the landlord has not complied with section 38(1) of the *Residential Tenancy Act* which requires the security deposit to be returned within 15 days of the end of the tenancy or the date the landlord receives the tenant's forwarding address.

This tenancy ended December 31, 2008, which was the effective date of the tenant's 10 day notice and the same date the landlord received the tenant's forwarding address. In order to comply with the *Act*, the security deposit and interest would have to been

received by the tenants no later than January 15, 2009. I find in favor of the tenant's claim, pursuant to section 38(6)(b) of the *Residential Tenancy Act*.

Monetary claim equivalent to one month's rent - \$900.00. – The landlord issued a two month notice to end tenancy under section 49 of the *Act*, for landlord's use of property, which entitles the tenant's to monetary compensation equivalent to one month's rent pursuant to section 51(1) of the *Act*, payable to the tenants on or before the effective date of the landlord's notice, in this case on or before January 31, 2009. Furthermore, a 10 day notice issued by the tenant to end the tenancy pursuant to section 50 of the *Act*, does not affect the tenants' right to compensation under section 51 of the *Act*. I find in favor of the tenants' monetary claim.

Filing fee - \$50.00. I find that the tenants have succeeded in large and they should recover the filing fee from the tenant.

Conclusion

I find the landlord in violation of section 35 (4) by failing to provide the tenants with a copy of the move out inspection report. **I HEREBY ORDER** the landlord to provide the tenants with a copy of the move out inspection report upon receipt of this decision.

I find that the tenant is entitled to a Monetary Order, including recovery from the landlord of the filing fee for this proceeding, taking into consideration the amount of \$460.00 issued by the Landlord dated 31/01/2009, as follows:

Double the security deposit plus interest	\$908.47
Monetary compensation, including interest, for the landlord ending tenancy early (Note no interest has accumulated)	900.00
Filing fee	50.00
Sub total (Monetary Order in favor of the tenants)	\$1,858.47
Less Landlord's Payment by Cheque # 082 dated 2009/01/31	- 460.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$1,398.47

The tenants' copy of this decision is accompanied by a Monetary Order in the amount of \$1,398.47. The order must be served on the respondent landlord and is enforceable through the Provincial Court of British Columbia.

March 20, 2009
Date of Decision

Dispute Resolution Officer