

DECISION

Dispute Codes SD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for double the security deposit and to recover the cost of the filing fee from the landlord.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 17, 2009. A Canada Post receipt was provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on March 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issue to be decided is whether the tenants are entitled to receive double their security deposit back and to recover the cost of the filing fee from the landlord for this application.

Background and Evidence

The tenancy was a month to month tenancy which began September 1, 2008 and ended February 28, 2009. Rent of \$1,300.00 was payable on the first of each month and the tenants paid a security deposit of \$650.00 on or about August 5, 2008.

The tenants testified that they did not have a written tenancy agreement and that their tenancy was based on a verbal agreement.

The tenants stated that the landlord did not conduct a move-in inspection nor did the landlord request a move-out inspection.

The tenants testified that they gave the landlord 1 month written notice to end the tenancy on January 15, 2009 to be effective February 15, 2009. The tenants stated that at the time they gave their notice to the landlord, he informed them that notice needs to go from the 1st of the month to the end of the month and not mid month so the tenants agreed to pay rent for the full month of February 2009.

The tenants stated that they cleaned the rental unit when they first took occupancy, and then did a thorough cleaning when they moved out. The tenants provided documentary evidence in the form of pictures to substantiate their testimony that they steam cleaned the carpets and cleaned the rental unit.

The tenants' witness testified that she assisted the tenants clean the rental unit at move in and that she was there to assist and direct the tenants in cleaning at the end of the tenancy. The witness corroborated the tenants' testimony and explained in detail how the tenants cleaned the rental unit and that the carpet was in fact cleaner when they moved out than when they moved into the rental unit. The witness also advised that at the time of move-in the landlord provided only 1 key to the two tenants and the tenants were required to get a second key cut on their own.

The landlord testified that he is not your "typical landlord" as he operates on a more informal matter. The landlord testified that he did not provide the tenants with a written tenancy agreement, did not provide a written move-in inspection, and did not conduct a move-out inspection.

The landlord testified that he returned the tenants' written notice to end tenancy and told them they had to issue a corrected noticed dated from February 1, 2009. The landlord contents that he requested a move out inspection to happen on February 28, 2009, that he asked each tenant verbally on two separate days to conduct a move-out inspection on February 28, 2009. The landlord testified that his wife called the tenants on several occasions to request a move out inspection but the landlord could not explain why the telephone number did not show up on either cell phone record provided in evidence or why his wife didn't leave a message for either tenant.

The landlord stated that the tenants appeared at his door on February 21, 2009 and gave him 3 keys to the rental unit and a ripped piece of paper with their forwarding address and telephone numbers. The landlord stated that the address did not have a City written down on the paper.

The tenants disputed the landlord's testimony about him returning the written notice. The tenants testified that they had a conversation with the landlord about the notice and agreed to pay the full month's rent and that the tenancy would still be ending in February 2009.

The tenants also disputed the landlord's statement that he requested a walk through for February 28, 2009. Both tenants stated that they had never heard the landlord request anything for February 28, 2009. The tenants stated that all they were told was that the landlord would have his wife walk through the unit after which he would send the tenants a cheque.

The landlord testified that he never requested a formal walk through.

Analysis

I found the landlord's credibility hard to assess as he contradicted himself throughout his testimony. At one point the landlord stated that he didn't conduct a move-in walk through inspection and later he stated he had conducted an "informal walk through".

The landlord stated that he asked the tenants on two separate occasions to attend a walk through on February 28, 2009 yet he made no reference to a time when he expected the walk through to take place and then stated he couldn't answer why he wouldn't have requested a walk through at the time the tenants handed in their keys. The landlord couldn't not explain, if his wife had called the tenants to request a move out inspection, why their telephone number would not show up on the tenants' telephone records.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the tenants to be highly probable given the conditions that existed at the time. Considered in its totality, I favor the evidence of the tenants over the landlord.

The landlord admitted to not providing the tenants with a written tenancy agreement as he was not a "typical landlord" and that he operates on a more informal matter. I find that the landlord has contravened section 13 of the *Residential Tenancy Act* by not preparing the tenancy agreement in writing.

The landlord testified that he did not conduct a written move-in or move-out inspection report. I find the landlord in violation of Sections 23 and 35 of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of: the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit pursuant to section 38(8) of the *Act*, or apply for dispute resolution to make a claim against the security deposit. I find that the landlord failed to comply with Section 38 as he did not file an application for dispute resolution within the 15 day period and did not return the security deposit within 15 days.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the landlord may not make a claim against the security deposit and must pay the tenant(s) double the amount of the security deposit plus interest as stipulated in section 38(1)(c) of the *Act*. I find in favour of the tenants' monetary claim for return of double their security deposit.

Monetary Order – I find that the tenants are entitled to a monetary claim and that the tenants are entitled to recover the filing fee from the landlord as follows:

Double the security deposit (650.00 x 2)	\$1,300.00
Interest due on security deposit of \$650.00 from August 5, 2008	3.97
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANTS	\$1,353.97

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$1,353.97. The order must be served on the landlord and is enforceable through the Provincial 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: May 08, 2009.

Dispute Resolution Officer