



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD; FF;

Introduction

I have been delegated authority under section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. Both parties were represented at the hearing and were provided the opportunity to be heard and respond to the other party’s submissions. The parties gave affirmed testimony at the Hearing and the Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Tenant's application for a monetary order for double the security deposit, and to recover the filing fee from the Landlords for the cost of the application.

Background and Evidence

Service

The Tenant testified that he mailed the Landlords a copy of the Application for Dispute Resolution and hearing package on February 24, 2009, and provided a copy of the postal receipt and a tracking number. The Landlord RK did not dispute being duly served with the Notice of Hearing documents.

Tenant's testimony

- The tenancy started on May 1, 2008. It was a fixed term tenancy, with an expiry date of April 30, 2009. Monthly rent was \$1,475.00, due on the first day of the month. The Tenant paid a security deposit in the amount of \$712.50 to the Landlord on April 13, 2008. There was a move-in inspection and a move-out inspection of the rental unit.
- On July 30, 2008, the Tenant wrote to the Landlord RK, stating that the rental unit was too noisy, due to continuous construction; that it lacked air conditioning; and was too far away from Vancouver. The Tenant advised the Landlord RK that he found the rental unit unsuitable for his needs and requested permission to assign the lease. The Tenant testified that he arranged for three prospective tenants, but that the Landlord RK did not follow up on any of the leads.
- On August 8, 2008, the Tenant wrote a letter to the Landlord RK advising that he would be vacating the rental unit on September 1, 2008.
- On October 14, 2008, the Tenant provided the Landlord RK with written notice of his forwarding address and requested return of his security deposit.
- The Landlords have not returned the security deposit, and the Tenant requested a monetary order for double the security deposit and to recover the cost of the filing fee from the Landlords.

Landlords' evidence

- The Tenant ended the lease before the term was up and the Landlords were not able to re-rent the unit until October 1, 2009. As a result, the Landlords are out-of-pocket for September's rent. The Landlord RK believes he is entitled to keep the security deposit as partial compensation for his monetary loss.

Analysis

Section 38 of the Act states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right

to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

The Landlords did not refund any of the security deposit to the Tenant and did not file an Application for Dispute resolution within 15 days of receiving the Tenant's forwarding address in writing. Pursuant to Section 38(6), the Tenant is entitled to double to the amount of the security deposit.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee from the Landlords.

I therefore make a monetary order in favour of the Tenant, calculated as follows:

Double the security deposit:	\$1,425.00
Interest accrued on the security deposit:	\$7.68
Recovery of filing fee	<u>\$50.00</u>
TOTAL	\$1,482.68
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Conclusion

I grant the Tenant a monetary order for \$1,482.68 against the Landlords. This order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

May 14, 2009
