



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit and pet damage deposit as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and pet damage deposit and if so, how much?

Background and Evidence

This tenancy started on January 1, 2008 and ended on March 31, 2009. Rent was \$1,600.00 per month. The Parties agree that the Tenants paid a security deposit of \$900.00 on December 5, 2007 and a pet damage deposit of \$700.00 on or about December 31, 2007.

The Parties also agree that the Tenants gave their forwarding address in writing to the Landlord on April 7, 2009 but that he did not return their security deposit or pet damage deposit and did not have the Tenants' written authorization to keep them. The Landlord argued, however, that the Tenants caused damages to the rental unit and broke a lease causing him to lose rental income. The Landlord said that shortly after the tenancy ended, he advised the Tenants that he wanted to keep the deposits to offset these damages and asked them to think about it. The Landlord claimed that when he returned from holidays in late April 2009 he tried to contact the Tenants about keeping the deposits but they would not return his calls.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenants' forwarding address in writing (whichever is later) to either return the Tenants' security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenants' **written** authorization



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
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to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit to the Tenants.

I find that the Landlord received the Tenants' forwarding address in writing on April 7, 2009 but did not return their security deposit or pet damage deposit and did not make an application for dispute resolution to make a claim against the deposits. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit or pet damage deposit. It is irrelevant whether the Landlord thought the Tenants were considering his proposal to keep the deposits because without the Tenants' written authorization, the Landlord was required under the Act to file an application for dispute resolution to make a claim against the deposits. In failing to do so, I find pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit (\$1,800.00) and pet damage deposit (\$1,400.00) to the Tenants with accrued interest of \$25.04 (on the original amount). As the Tenants have been successful in this matter, I also find that they are entitled to recover their \$50.00 filing fee for this proceeding.

I also find that the Landlord contravened the Act in accepting a security deposit of \$900.00. Section 19 of the Act says that a Landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

Conclusion

A monetary order in the amount of **\$3,275.04** has been issued to the Tenants and a copy of the Order must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 12, 2009.

Dispute Resolution Officer