

DECISION

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants filed for a monetary order for return of double the security deposit and the filing fee for the claim.

The Landlord filed a claim for a monetary order for damages and cleaning the rental unit, to keep the security deposit, and for the filing fee for the claim.

Both parties had a Notice of Hearing for the scheduled hearing time and date.

The Tenant appeared and provided affirmed evidence.

The Landlord did not attend the hearing, and therefore, I dismiss the Landlord's claim without leave to reapply.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenants vacated the rental unit due to a two month Notice to End Tenancy, issued by the Landlords, who had purchased the residential property and wanted to occupy the rental unit.

The Tenants paid a security deposit of \$675.00 to their prior landlord on April 12, 2008.

The Tenants vacated the rental unit on September 1, 2008, and did not sign over a portion of the security deposit.

In early May of 2009, the Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to. The Tenants forwarding address was also set out in the Application for Dispute Resolution, which was served on the Landlord. Despite this, I find the Landlord did not apply to retain the security deposit within 15 days of the receipt of the Tenants' forwarding address.

Analysis

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, plus interest.

There were no written condition inspection reports performed when the Tenants moved in or when they vacated the rental unit.

Therefore, based on the affirmed testimony and evidence, and on a balance of probabilities, I find the Landlord has breached section 38 of the Act.

I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,407.30**, comprised of double the security deposit (\$675.00 x 2), the interest on the original amount held (\$7.30), and the \$50.00 fee for filing this Application.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed without leave to reapply.

The Landlord breached the Act and the Tenants are entitled to the monetary order sought.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of 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: September 03, 2009.

Dispute Resolution Officer