

DECISION

Dispute Codes:

MNSD, FF

Introduction

This is the Tenants' application a monetary order for double the security deposit paid to the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The Tenants gave the following testimony:

- The Tenants paid the Landlord a security deposit in the amount of \$798.50 on April 22, 2009.
- On May 15, 2009, the Tenants gave the Landlord their forwarding address, in writing, by registered mail. The Tenants provided a copy of the registered mail receipt and tracking number.
- The Landlord has not returned the Tenants' security deposit.
- The Tenants did not agree that the Landlord could withhold any of the security deposit.

The Landlord's agent gave the following testimony:

- The Tenants signed a tenancy agreement to move into the rental unit on May 15, 2009. On April 29, 2009, the Tenants advised that they would not be moving in.
- The Landlord kept the security deposit for ½ a month's rent (May 15 – June 1, 2009).
- The rental unit was re-rented effective June 1, 2009.

Analysis

A security deposit is to be held in trust by a landlord for the tenant, to be applied in accordance with the provisions of the Act.

I accept the Tenants' testimony that they served the Landlord with written notification of their forwarding address on April 22, 2009, in accordance with Section 88(d) of the Act. Documents served in this manner are deemed to be served 5 days after mailing.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord's agent gave testimony that he felt he had a claim for damages against the security deposit. This is the Tenants' application. The Landlord has not filed an application for damages and is at liberty to do so.

The Landlord is deemed to have received the Tenants' forwarding address in writing on April 27 2009. The Landlord did not return the security deposit within 15 days of receipt of the Tenants' forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$1,597.00. No interest has accrued on the security deposit.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

Conclusion

I hereby grant the Tenants a Monetary Order against the Landlord in the amount of \$1,647.00. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 5, 2009.
