

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This is the Tenants' application for a Monetary Order for double the security deposit; and to recover the cost of the filing fee from 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 double the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The Tenants testified that they provided the Landlord with written notice of their forwarding address on April 29, 2009, by regular mail. The Tenants rented the upper suite of the rental unit in October, 2007, and paid a security deposit in the amount of \$678.00 to the Landlord. The lower suite of the rental unit was rented by a family member of the Tenants in December, 2008. The Tenants paid the security deposit to the Landlord for the lower suite, in the amount of \$525.00, on December 1, 2008. The Tenants paid the Landlord the rent for both the lower and the upper suite. The Tenants did not give the Landlord permission to retain any of the security deposits.

The Tenants testified that both the upper and lower suites were vacated at the end of April, 2009. The Tenants stated that the Landlord had locked them out of the residence on April 26, 2009. There was no move-in or move-out inspection done for either of the suites.

The Landlord testified that he did not receive written notice of the Tenant's forwarding address until he was served with the Notice of Hearing documents on June 17, 2009. The Landlord concurred that the Tenants paid the rent and security deposits for both of the suites after their family member moved in downstairs. The Landlord stated that he had a claim against the security deposits for various items.

Analysis

This Hearing was scheduled to hear the Tenants' application. The Landlord has not filed an Application for Dispute Resolution and therefore I have not heard or considered any of the Landlord's claims against the security deposit. The Landlord is at liberty to file an application, should he choose to do so.

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

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.

I find that the Landlord received written notice of the Tenants' forwarding address when he received the Notice of Hearing documents on June 17, 2009. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's 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 deposits paid to the Landlord, in the amount of \$2,406.00, plus accrued interest on the original deposits. There is no interest payable for the 2009 calendar year.

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

The Tenants have established a monetary order, as follows:

Double the security deposits of \$1,203.00	\$2,406.00
Accrued interest on \$678.00 from Oct 1, 2007 to Dec 31, 2008	\$12.76
Accrued interest on \$525.00 from Dec 1, 2008 to Dec 31, 2008	\$.67
Recovery of the filing fee	\$50.00
TOTAL AMOUNT DUE TO THE TENANTS	\$2,469.43

Conclusion

I hereby grant the Tenants a Monetary Order against the Landlord in the amount of \$2,469.43. 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 2, 2009.
