



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 their security deposit, for compensation for the Landlord's failure to return the security deposit within the time limits required under the Act, and to recover one-half of a month's rent and the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and if so, how much?
2. Are the Tenants entitled to recover one-half of their August 2009 rent payment?

Background and Evidence

This month to month tenancy started on August 1, 2009 and ended on August 15, 2009 when the Tenants moved out. Rent was \$800.00 per month payable in advance on the first day of each month. The Tenants paid a security deposit of \$400.00 at the beginning of the tenancy.

On August 13, 2009, the Parties executed a Mutual Agreement to End the Tenancy which was to take effect on August 15, 2009. The Parties also agreed in writing that the Landlord would return one-half of the rent (or \$400.00) for the month of August 2009 if the Tenants moved out by August 15, 2009. The agreement further stated that "This amount does not include the damage deposit...a part or whole of rent will be returned depending on the condition of the suite and amenities."

The Landlord claimed that this term was inserted into the agreement because the Tenants verbally agreed to forfeit the security deposit. The Landlord said that the Tenants agreed to forfeit the security deposit to compensate him for his time to find a new tenant. The Landlord admitted that there was no term in the tenancy agreement to that effect. The Landlord said his intention was that any damages to the rental unit would be deducted from the Tenants' rent refund.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Tenants claimed that they did not agree to forfeit their security deposit. The Tenants said they believed the agreement regarding the return of funds following an inspection of the rental unit had to do with the security deposit and not with the rent which the Landlord said he would return. The Tenants said that following the condition inspection on August 15, 2009, the Landlord told them that he would not return their security deposit. The Parties agree that the Tenants gave the Landlord their forwarding address in writing on August 17, 2009.

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 or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenants' **written authorization** to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenants.

I find that the tenancy ended on August 15, 2009 and that the Tenants gave the Landlord their forwarding address in writing on August 17, 2009. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit. Consequently, the Landlord had until September 2, 2009 to either return the deposit to the Tenants or to make an application for dispute resolution to make a claim against the deposit. As the Landlord did not return the security deposit to the Tenants or make an application for dispute resolution, I find that the Landlord must return double the amount of the security deposit or **\$800.00** to the Tenants.

I also find that the term of the Parties agreement that purports to allow the Landlord to deduct damages from the Tenants' rent refund is unenforceable. In particular, I find that the Landlord has attempted to circumvent the Act by treating the Tenants' rent refund as a security deposit which he is not entitled to do. Section 19 of the Act states that a Landlord must not require or accept a security deposit that is greater than one month's rent and if he does, a tenant may recover it. Section 5(2) of the Act says that any attempt to avoid or contract out of the Act is of no force and effect.

As the term of the Agreement that treats the rent refund as an additional security deposit contravenes s. 19 of the Act, I find that it is unenforceable and the Tenants are entitled to recover the amount of **\$400.00**. As the Tenants have been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

A monetary order in the amount of **\$1,250.00** has been issued to the Tenants and a copy of it 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: December 30, 2009.

Dispute Resolution Officer