



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 and 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 if so, how much?

Background and Evidence

This tenancy started on October 1, 2002 and ended on August 31, 2009 when the Tenants moved out. The Tenants paid a security deposit of \$425.00 at the beginning of the tenancy.

The Parties agree that the Tenants gave the Landlord their forwarding address in writing in person on August 31, 2009 and that the Tenants did not give the Landlord written authorization to keep the security deposit. The Parties also agree that a move out condition inspection report was not completed at the end of the tenancy.

Analysis

Section 36(2) of the Act says that if a Landlord does not complete a move out condition inspection report, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for damages, however, he may not offset those damages from the security deposit.

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 Tenant's forwarding address in writing (whichever is later) to either return the Tenant's 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 Tenant's 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.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

I find that the Landlord received the Tenants' forwarding address in writing on August 31, 2009 but did not return their security deposit and did not make an application for dispute resolution to make a claim against the deposit. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit and that his right to make a claim against it for alleged damages was extinguished under s. 36(2) of the Act because he did not complete a move out condition inspection report. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit (\$850.00) to the Tenants with accrued interest of \$15.05 (on the original amount).

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit, I find that they did not specifically waive reliance on s. 38(6) of the Act. As the Tenants have been successful in this matter, I also find that they are entitled to recover the \$50.00 filing fee for this proceeding.

Conclusion

A monetary order in the amount of **\$915.05** 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: January 11, 2010.

Dispute Resolution Officer