

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This is the Tenants' application a monetary order for double the security deposit paid to the Landlord, for return of prorated rent; 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 a monetary order, and if so, in what amount?
- 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 \$650.00 and a pet deposit in the amount of \$350.00 on April 7, 2007.
- The Tenants moved out of the rental unit on August 24, 2009, and the Landlord re-rented the rental unit immediately, charging the new tenants for 7 days prorated rent. The Tenants are applying for return of that portion of the rent paid to the Landlord in the amount of \$293.55.
- The Tenants provided the Landlord with written notification of their forwarding address within two days of vacating the rental unit. On September 1, 2009, the Landlord mailed the Tenants a partial refund of their security and pet deposits in the amount of \$702.50. The Tenants have cashed this cheque. The Tenants did not agree that the Landlord could keep any of the security deposit and pet deposit.

- The Landlord showed up for the move-out inspection one hour early and the Tenants were not ready, as their hired cleaner was still cleaning the rental unit. The Landlord left the rental unit.
- The Tenants called the Landlord at 8:34 a.m. the next morning and again at 1:16 p.m. in the afternoon. Both times, the Landlord stated that he was not able to do the inspection. The Landlord completed a Condition Inspection Report without the Tenants, and provided the Tenants with a copy when he sent their partial refund cheque.

The Landlord's agent gave the following testimony:

- The rental unit was a brand new home when the Tenants moved in. The Tenants did not clean the rental unit to an acceptable standard, and the new tenants were not able to move in to the rental unit because it was not in acceptable condition.
- The Tenants' dogs had been given full run of the place, and there was dog hair everywhere. The kitchen counters were cluttered, the carpets had not been cleaned and the place was a disaster. The stainless steel sink and the stove were stained and it looked like they were never cleaned the whole of the tenancy.

Analysis

The Tenants applied for return of prorated rent. The Landlord's agent testified that the new tenants did not move into the rental unit early. This portion of the Tenants' application is dismissed without leave to reapply.

The Landlord's agent gave testimony to suggest that the Landlord had a claim against the Tenants for damages. This Hearing was convened to consider the Tenants' application. The Landlord has not filed an application for damages and is at liberty to do so.

Security and pet deposits are not the property of the Landlord. They are 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 and/or pet deposits in full, together with any accrued interest;
or
2. make an application for dispute resolution claiming against the security and/or pet deposit.

The Landlord received the Tenant's forwarding address and returned a portion of the security deposit and pet deposit, together with \$2.50 accrued interest, within 15 days of receipt of the Tenant's forwarding address. The Landlord did not file for dispute resolution against the security and pet deposits.

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 Tenants are entitled to a monetary order for double the remainder of the security and pet deposits, calculated as follows:

Balance of pet and security deposits (\$300.00) x 2	\$600.00
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The Tenants have been partially 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 \$650.00 against the Landlord. 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: January 18, 2010
