

Decision

Dispute Codes: MNSD; FF

Introduction

This is the Tenants' application for return of the security deposit and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. Both parties gave affirmed evidence and the matter 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 Landlords?

Background and Evidence

The Tenants gave the following testimony:

The Tenants mailed the Notice of Hearing documents to the Landlord, via registered mail, on August 27, 2009.

The tenancy ended on July 31, 2009. There was no condition inspection report done at the end of the tenancy because the Landlord did not request one be done.

The Tenants paid a security deposit in the amount of \$750.00 and a pet deposit in the amount of \$750.00 on November 15, 2008. The Landlord did not return all of the security deposit to the Tenants. The Tenants provided the Landlord with their forwarding address, via telephone, after moving out of the rental unit. The Tenants received a cheque in the amount of \$55.74, dated August 12, 2009, sent to their

forwarding address. The Landlord did not have the Tenants' permission to retain any of the security and pet deposits.

The Landlord's agent gave the following testimony:

The Tenants signed a lease agreement, which expired on August 31, 2009, and moved out before the lease expired. The Tenants gave plenty of notice, but the Landlords were not able to rent the suite prior to September 1, 2009. The Landlord is therefore entitled to damages in the amount of one month's rent, plus liquidated damages, pursuant to the terms of the lease agreement.

The Tenants did not refill the oil tank before they moved out and did not properly clean the suite. The Landlord's agent submitted that the Landlord is entitled to damages in the total amount of \$3,697.00.

Analysis

The Landlord's agent provided testimony that he believes the Landlord is entitled to a monetary order for damages. The Landlord has not yet filed an Application for Dispute Resolution for damages and is at liberty to do so. This Hearing was convened to hear the Tenant's application against the security deposit and pet deposit, and I make my decision based on the relevant sections of the Act with respect to the Tenants' application only.

Section 38 of the Act provides for application of the security deposit and pet deposit at the end of a tenancy.

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 received the Tenants' forwarding address prior to August 12, 2009, as evidenced by the partial refund cheque sent to the Tenants at their forwarding address. I find that the Landlords received the Tenants' forwarding address in writing when they were served with the Tenants' Application for Dispute Resolution. The Landlord did not return the remainder of the deposits, or file against the deposits within 15 days of receiving the Notice of Hearing documents.

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 and/or pet deposits.

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

Therefore, the Tenants are entitled to a monetary order, calculated as follows:

Double the residue of the security and pet deposits	
(\$1,500.00 – \$55.74) x 2	\$2,888.53
Interest accrued on the \$1,500.00 deposits	\$2.89
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$2,941.41

Conclusion

I grant the Tenants a Monetary Order in the amount of \$2,941.41 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 5, 2010
