

Decision

Dispute Codes:

MNDC, MNSD; OLC; FF

Introduction

This is the Tenants' application for a Monetary Order for compensation for damage or loss and double the security deposit; for an Order that the Landlord comply with the Act; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Are the Tenants entitled to a Monetary Order for compensation for damage or loss and for double the security deposit?

Background and Evidence

The Tenant LW testified that he mailed the Notice of Hearing package to the Landlord, by registered mail, on November 30, 2009. The Tenant LW provided a tracking number for the registered mail document.

The Tenant LW testified that he mailed written notification of his forwarding address to the Landlord, by registered mail, on October 6, 2009. The Tenants provided a copy of the registered mail receipt and tracking number.

The Tenants gave the following testimony:

The Tenants viewed the rental unit at the beginning of August, 2009. The Landlord told them she would be doing renovations prior to the Tenants moving in. The Tenants provided a security deposit in the amount of \$1,895.00 on August 7, 2009, and provided a copy of a receipt for the security deposit in evidence. On September 1, 2009, the Tenants met with the Landlord, paid the first month's rent in the amount of \$1900.00,

and picked up the keys. No tenancy agreement was signed by the Tenants. The Tenants provided a copy of a receipt for September's rent payment.

The renovations made to the suite were unsatisfactory. The Tenants understood they would be provided with a three bedroom suite. The Landlord had converted the laundry room into a very small 3rd bedroom, with no window. The third tenant would not agree to move into the rental unit, and the Tenants were not prepared to pay high rent for what was basically a two bedroom suite. The Tenants negotiated with the Landlord to move out of the rental unit and gave the Landlord generous access to show the rental unit to prospective new tenants, including allowing viewings at 10:00 at night. The Tenants also placed ads on Craigs List in an attempt to find new tenants for the Landlord. New tenants were found and moved into the rental unit on September 5, 2009. The new tenants paid full rent to the Landlord for the month of September, 2009.

The Tenants are applying for double the security deposit because the Landlord has not returned their security deposit within 15 days of receipt of their forwarding address in writing. The Tenants are also applying for recovery of the rent they paid (prorated) from September 5 to September 30, 2009. The Tenants seek to recover the cost of the \$100.00 filing fee from the Landlord.

Analysis

I am satisfied that the Landlord was served with the Notice of Hearing documents in accordance with the provisions of Section 89(c) of the Act. Despite being served with the documents, the Landlord did not sign into the teleconference and the Hearing proceeded in her absence.

The Tenants applied for an Order that the Landlord comply with the Act, but did not specify what section of the Act. The Tenants are no longer living in the rental unit, and therefore this portion of their application is dismissed.

Based on the undisputed testimony of the Tenants, I find that the Landlord was served with written notification of the Tenants' forwarding address, by registered mail. Service

in this manner is deemed to be effected 5 days after mailing the documents. In this case, I find that the Landlord received the Tenants' forwarding address on October 11, 2009. I accept the Tenants' undisputed testimony that the Landlord did not return the security deposit within 15 days of receiving their forwarding address, or at all. The Landlord did not file her own Application for Dispute Resolution against the security deposit. Therefore, in accordance with the provisions of Section 38(6) of the Act, the Landlord **must** pay the Tenants double the amount of the security deposit, in the amount of \$3,790.00. No interest has accrued on the security deposit.

Based on the undisputed testimony of the Tenants, I find that the Tenants entered into an oral tenancy agreement with the Landlord to rent a 3 bedroom suite for \$1,900.00 per month. I accept the Tenants' testimony that the 3rd bedroom was not suitable for use as a bedroom, and that therefore the Landlord breached the tenancy agreement. The Tenants have established their claim for recovery of a pro-rated amount of rent for September, 2009, in the amount of \$1,683.33 ($\$1,900.00/30 \times 5 = \366.67 ; $\$1,900.00 - \$366.67 = \$1,683.33$).

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 claim, calculated as follows:

Description	Amount
Double the security deposit	\$3,790.00
Prorated rent rebate for the month of September, 2009	\$1,683.33
Recovery of the filing fee	<u>\$100.00</u>
TOTAL MONETARY AWARD	\$5,573.33

Conclusion

The Tenants' application for an Order that the Landlord comply with the Act is dismissed.

I hereby grant the Tenants a Monetary Order in the amount of \$5,573.33 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: April 13, 2010