

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of part of their security deposit and pet damage deposit, for compensation equivalent to the amount of the security deposit and pet damage deposit due to the Landlord's failure to return them within the time limits required under the Act and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the application and Notice of Hearing by registered mail to her residence on February 11, 2010 however she did not pick up the hearing package. Section 90 of the Act says that a document delivered in this manner is deemed to be received 5 days later even if the recipient refuses to pick up the package. Based on the evidence of the Tenants, I find that the Landlord was served with their hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of all of their security deposit and pet damage deposit and if so, how much?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started in May 2009 and ended on December 29, 2009 when the Tenants moved out. Rent was \$950.00 per month. The Tenants paid a security deposit of \$475.00 and a pet damage deposit of \$475.00 at the beginning of the tenancy. The Tenants said the Landlord did not complete a move in or a move out condition inspection report.

The Tenants said they sent their forwarding address in writing to the Landlord by registered mail on January 15, 2009 and that according to the Canada Post online tracking system, she received it on that day. The Tenants said the Landlord mailed them a cheque and a letter dated January 23, 2010 (which they received on February 4, 2010) advising them that she had deducted \$285.00 from their security deposit and pet damage deposit for repairs and estimated utilities. The Tenants said they did not give the Landlord written authorization to keep any of their security deposit or pet damage deposit.

Analysis

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or 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 compensation for damages however she may not offset those damages from the security deposit or pet damage deposit.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenants' forwarding address in writing (whichever is later) to either return the Tenants' security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenants' written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the Landlord received the Tenants' forwarding address in writing on January 15, 2010 but did not return all of their security deposit and pet damage deposit and did not make an application for dispute resolution to make a claim against the deposits. I also find that the Landlord did not have the Tenants' written authorization to keep any part of the security deposit or pet damage deposit and that her right to make a claim against them for compensation for alleged damages to the rental unit was extinguished under s. 24(2) and s. 36(2) of the Act because she did not complete a move in or a move out condition inspection report. As a result, I find that the Landlord must return the balance of the Tenants' security deposit and pet damage deposit in the amount \$285.00. I also find that the Landlord must pay the Tenants compensation pursuant to s. 38(6) of the Act equivalent to the total amount of those deposits or \$950.00 because she did not return the balance of the security deposit and pet damage deposit within the time limits required under the Act.

Although the Tenants indicated on their application that they were claiming double the amount of the unreturned portion of the security deposit and pet damage deposit, the Act is clear that the amount of compensation that must be paid under s. 38(6) of the Act is the full amount of the security deposit and pet damage deposit. 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." I find that the Tenants did not specifically waive reliance on s. 38(6) of the Act but rather mistakenly claimed the reduced amount based on advice they said they received. Consequently, I find that the Tenants are entitled to compensation of \$1,235.00.

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 **\$1,285.00** 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: May 12, 2010.

Dispute Resolution Officer