

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for the return of double their security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Tenants are entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Tenants and the Landlord agree that this tenancy began on October 15, 2004; that the parties had a written tenancy agreement; that the Tenants paid a security deposit of \$600.00 on October 07, 2004; that the tenancy ended on December 01, 2009; that at the end of the tenancy the Tenants did not give the Landlord written authority to retain any portion of the security deposit; that the Tenants provided the Landlord with their forwarding address, in writing, on January 08, 2010, via email; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that on January 28, 2010 he mailed a cheque to the Tenants, in the amount of \$91.68. He stated that he retained \$393.00 of the security deposit for utilities that were owing plus \$115.32 for cleaning costs, and that the \$91.68 payment represented the remaining portion of the security deposit. The Tenants stated that they have never received the cheque for \$91.68.

The Landlord stated that he was advised by the Tenants, on or about February 15, 2010, that they did not receive his cheque for \$91.68 but he did not reissue that cheque or place a stop payment on that cheque. The Landlord stated that he does not know if that cheque has ever been cashed.

The Landlord stated that he believed he was entitled to retain a portion of the security deposit because of a clause in the written tenancy agreement that stipulates he can retain the security deposit for damage to the rental unit; cleaning costs; and money owed to the Landlord by the Tenant.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenants paid a security deposit of \$600.00 on October 07, 2004; that the tenancy ended on December 01, 2009; that the Tenants provided the Landlord with their forwarding address, in writing, on January 08, 2010; that on January 28, 2010 that the Landlord mailed the Tenants a cheque for \$91.68, which represented a return of a portion of the security deposit; that the Tenants did not received the cheque for \$91.68; that the Tenants did not give the Landlord written authorization to retain any portion of the security deposit at the end of this tenancy; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord never filed an Application for Dispute Resolution claiming against the security deposit and he did not return the full security deposit within fifteen days of receiving the Tenant's forwarding address after the tenancy ended. Although the Landlord did attempt to return a portion of the security deposit by mail on January 28, 2010, he did not have authorization to retain any portion of the security deposit and was, therefore, obligated to return the entire security deposit within the fifteen day period.

In reaching this conclusion, I was guided, in part, by section 5(1) of the *Act*, which stipulates that landlords and tenant may not avoid or contract out of the *Act*. This section requires the Landlord to comply with section 38 of the *Act* even if there is a term in their written tenancy agreement that stipulates that the Landlord can retain a portion of the security deposit without written authorization from the Tenant or without applying to the Residential Tenancy Branch for authorization to retain it. Such a term is unenforceable, as it contravenes section 5(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

Conclusion

I find that the Tenant has established a monetary claim of \$1,271.25, which is comprised of double the security deposit, \$21.25 in interest on the original amount of the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This monetary Order shall be reduced by \$91.68 in the event that the Tenants receive, and are able to cash, the cheque sent to them by the Landlord on January 28, 2010.

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: July 05, 2010.

Dispute Resolution Officer