



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

FF

Introduction

This is the Tenants' application for a Monetary Order for double the security deposit; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The Tenant testified that he mailed the Notice of Hearing documents and evidence package to the Landlord, by registered mail, on May 21, 2010. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. The Landlord acknowledged receipt of the documents.

The Tenant acknowledged receipt of the Landlord's evidence package.

The Tenant testified that he paid a security deposit in the amount of \$550.00 on July 1, 2008. The Tenant stated that he provided the Landlord with written notification of the Tenants' forwarding address, by registered mail sent on April 26, 2010. The Landlord acknowledged receipt of the Tenants' written notification of their forwarding address.

The parties agreed that the tenancy ended sometime between April 22 and 24, 2010.

The Tenant testified that the Landlord refused to return the security deposit, stating that the deposit would be used to repair damages to the rental unit. The Landlord testified that there was a condition in the tenancy agreement that the security deposit would be kept by the Landlord for any damages that the Tenants caused.

Analysis

This matter was convened to hear the Tenants' Application for Dispute Resolution. The Landlord has not filed an Application for Dispute Resolution for damages, and was advised that he is at liberty to do so, under the provisions of Section 67 of the Act.

Security deposits are held in a form of trust by the Landlord and must be administered in accordance with the provisions of Section 38 of the Act. The parties cannot contract outside the Act, and any attempt to do so is null and void. A clause in a tenancy agreement that allows the Landlord to arbitrarily keep any or all of the security deposit is of no force or effect.

Section 38(1) of the Act provides 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** repay any security deposit or pet damage deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

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, pet damage deposit, or both, as applicable.

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

I grant the Tenants a monetary order, calculated as follows:

Double the security deposit	\$1,100.00
Accrued interest on the \$550.00 security deposit	\$4.15
Recovery of the filing fee	<u>\$50.00</u>
Balance owing by the Landlord to the Tenants	\$1,154.15

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of \$1,154.15 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: October 13, 2010.
