



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for a monetary order for return of double the amount of the security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The parties all attended, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information and testimony has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Are the tenants entitled to return of double the base amount of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began in July, 1999 and the tenants vacated the rental unit on May 30, 2010. Rent in the amount of \$1,010.00 was payable in advance on the 1st day of each month, and there are no rental arrears. On June 30, 1999 the landlords collected a security deposit from the tenants in the amount of \$425.00.

The tenants testified that they gave the landlord their forwarding address in writing on April 26, 2010 when they gave notice to vacate the rental unit. The tenants again gave their forwarding address to the landlord when the tenants moved out in a letter dated May 30, 2010, a copy of which was provided in advance of the hearing. That letter contains the tenants' forwarding address. They further stated that they wanted the landlords to conduct a move-out condition inspection report, but the landlord had agreed to let new tenants occupy the unit before the inspection was done. The tenant prepared a note at the bottom of the May 30, 2010 letter which the landlord signed. That note states:

"I agree after examining the apartment, it is suitable for the next tenants to move in. I have no issues with the state of the apartment."

The tenants have not received any portion of the security deposit, nor have they received an application by the landlords for dispute resolution. The tenants claim \$850.00 as the double amount of the security deposit, plus interest on the base amount in the amount of \$42.62 and \$50.00 for the filing fee for the cost of this application.

The tenants further testified that on October 19, 2009 the landlords delivered a notice of a rent increase, a copy of which was provided in advance of the hearing. That notice states:

"October 19, 2009 Notice To All Tenants Starting February 1, 2010 there will be a rent increase of \$35.00. Thank you!"

The tenants submit that the notice of the rent increase is not in the form prescribed by the *Residential Tenancy Act*, they paid the rental increase from February 1, 2010 till the end of May, 2010, and request a monetary order for \$35.00 per month for 4 months, totalling \$140.00.

The landlords testified that there was damage to the floor in the rental unit, and that the tenants pushed the male landlord to sign the note at the bottom of the May 30, 2010 letter. The landlords have not applied for dispute resolution.

Analysis

Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on May 30, 2010, and that the tenants provided their forwarding address in writing on that date. I further find that the landlords have failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing.

I find that the tenants have established a claim for the security deposit of \$425.00, accrued interest of \$42.62, and double the base amount of the security deposit in the amount of \$850.00, for a total of \$ 892.62. The tenant are also entitled to recover the \$50.00 filing fee for this application.

The *Residential Tenancy Act* also states as follows, as it relates to rent increases:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) If the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) If the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

I find that the landlords have failed to comply with the Act, in that the notice given to the tenants was not in the correct form. Therefore, the tenants are entitled to recovery of the increase in the amount of \$140.00 for February to May, 2010 inclusive.

Conclusion

For the reasons set out above, I grant the tenants an order under section 67 for the balance due of \$1,082.62. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: November 22, 2010.

Dispute Resolution Officer