



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD & FF

Introduction

This hearing dealt with the tenants' application seeking the return of their security deposit and the return of their garage opener deposit. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Did the landlord fail to return the tenants' security deposit in accordance with section 38(1) of the *Act*?

Did the landlord have the right to make a deduction from the tenants' security deposit related to parking costs?

Background and Evidence

This tenancy agreement began on May 15, 2009 and ended on July 31, 2010. The monthly rent was \$950.00. The tenants paid a security deposit of \$475.00 on May 4, 2009. The parties completed move in and move out condition inspections of the rental unit on May 2, 2009 and July 31, 2100. Copies of the condition inspection reports were not provided as evidence for this proceeding. The tenants also paid a \$100.00 deposit on the remote to access the underground parking and parked in the underground parking for the term of the tenancy. There is no indication in the tenancy agreement that the tenants were required to pay any additional fee for parking.

On July 31, 2010 the tenants provided the landlord with their forwarding address in writing and return all keys plus the underground parking remote. It was the landlord's position that the tenants were required to pay \$30.00 per month for the underground parking. The landlord acknowledged that this was not reflected in the tenancy agreement and indicated that it was a mistake of the previous property manager to not

charge the tenants for the underground parking. The landlord approached the tenants in March and May 2010 to have the issue resolved.

The landlord then deducted the sum of \$360.00 related to parking fees from the tenants' security deposit. The landlord also deducted \$60.00 related to replacing a blind in the rental unit. The landlord stated that on August 13, 2010 the tenants were sent the remaining portion of the security deposit. This sum included the refund of the \$100.00 deposit on the parking remote. The landlord stated that the tenants agreed to this deduction in writing. The landlord did not provide this as evidence.

The tenants dispute the landlord's claim that they were required to pay for parking. They stated that at the start of the tenancy they received a parking spot and paid the deposit on the underground parking remote. There was nothing in writing stating they were required to pay a parking fee and it was not until March 2010 that the landlord approached them seeking payment related to parking.

The tenants stated that they did agree to pay the \$60.00 towards the replacement of a blind. The tenants stated that they have always disputed the issue regarding parking and would not have agreed to the landlord deducting this from their security deposit. The tenants deny signing a document allowing the landlord deduct money towards the parking fees. The tenants also alleged that the landlord filled in this amount after the document had been signed by the tenants.

The tenants stated that the landlord did not send the balance of the security deposit until August 26, 2010 and provided a copy of the envelop from the landlord which was stamped by Canada Post on August 26, 2010.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I grant the tenants' application for Dispute Resolution. I find that the landlord failed to return the tenants' security deposit within the 15 days required by the *Act* and Order that the landlord must pay the tenants double their security deposit pursuant to section 38(6) of the *Act*.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states

that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept the evidence of the tenants that the landlord received their forwarding address in writing on July 31, 2010. I accept the evidence provided by the tenants that the partial payment of the tenants' security deposit was not sent until August 19, 2010 based on the copy of the post mark on the envelop submitted into evidence. I accept that Canada Post date stamps envelops when they are received at the post office to be sent. Although the landlord may have prepared the tenants' money before this date I find that it was not sent until after the 15 day timeframe had expired. I also accept that the landlord did not file an application for Dispute Resolution requesting to retain the tenants' security deposit.

Finally, I find that the landlord only had the tenants' permission to deduct \$60.00 from their security deposit based on the oral testimony at the hearing. Although the landlord claims that the tenants also agreed to the deduction of the money related to the parking fees, this was disputed by the tenants and the landlord failed to provide actual evidence that the tenants agreed to the deduct in writing. Section 38(4) states that only a sum agreed to by a tenant in writing may be deducted from the security deposit without filing an application for Dispute Resolution.

Having granted the tenant's application, I also grant the tenant's request to recover the filing fee paid for submitting this application from the landlord. I find that the tenant has established a total monetary claim for the sum of **\$825.00**. This sum is comprised of double the security and pet deposits of \$830.00 (based on the security deposit deducted by \$60.00), the \$100.00 parking remote deposit, plus the \$50.00 filing fee. From this sum I deduct the sum of \$155.00 which the landlord has already returned to the tenant.

Conclusion

I grant the tenants application and have issued a monetary Order for the sum of **\$825.00**. This Order must be served upon the landlord. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: December 13, 2010.

Dispute Resolution Officer