

DECISION

Dispute Codes: MNSD; FF

Introduction

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

The Tenants gave affirmed evidence at the Hearing.

The Tenant MA testified that she handed the Notice of Hearing documents to the Landlord's agent at the rental property, on July 9, 2010 at 4:30 p.m. The Tenant CZ testified that she witnessed the Tenant MA providing the Landlords' agent with the Notice of Hearing documents.

Based on the affirmed testimony of the Tenants, I am satisfied that the Landlords were served with the Notice of Hearing documents in accordance with the provisions of Section 89(b) of the Act. Despite being served, the Landlords did not sign into the teleconference and the Hearing continued in their absence.

Issue(s) to be Decided

- (1) Are the Tenants entitled to a monetary order pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The Tenant AM provided the following evidence, orally and in the Tenants' evidence package:

- The tenancy started on July 1, 2009 and ended on April 30, 2010. A copy of the tenancy agreement was entered in evidence.
- The Tenants paid a security deposit in the amount of \$550.00 at the beginning of the tenancy.
- On May 1, 2010, the Tenant AM provided the Landlords notice in writing of their forwarding address. The Landlords have not returned any of the security deposit to the Tenants
- The Tenants did not agree that the Landlords could retain any of the security deposit. A copy of the Condition Inspection Report was entered in evidence.
- On June 28, 2010, the Landlord CDC sent a letter to the Tenant MA at her forwarding address, advising that the Landlords would send her file to a collection agent if she did not pay the Landlords \$278.50. A copy of the letter was entered in evidence.

Analysis

The Condition Inspection Report indicates that the rental unit needed “minor cleaning”, shampooing and painting. The Landlords and the Tenants did not complete the Report (i.e. the section X., where the Landlords indicate “damage to rental unit or residential property for which the tenant is responsible”; section Z., where the Tenants indicate that they agree with the report, or do not agree with the report, and state the reasons why; or section AA, where the Tenants indicate agreement to specific amounts to be deducted from the security deposit).

There is an addendum to the Condition Inspection Report entitled “Security Deposit Refund”, which was signed by the Landlord on May 1, 2010. The Tenants did not sign the section on the addendum where they would indicate agreement to deductions made from their security deposit. Therefore, I find that the Tenants did not agree to any specific deductions from their security deposit.

The addendum to the Condition Inspection Report includes the Tenants' forwarding address. Based on the documentary evidence and affirmed testimony of the Tenant MA, I am satisfied that the Tenants provided the Landlords with their forwarding address on May 1, 2010.

Section 38(1) of the Act provides that (unless the tenant provides written permission for the landlord to retain all or a portion of the security deposit) 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 Landlords did not return any of the security deposit to the Tenants and have not filed an Application for Dispute Resolution against the security deposit within 15 days of the date the Tenants provided their forwarding address in writing. Therefore I find that the Tenants are entitled to a monetary award in the amount of \$1,100.00.

The Tenants have been successful in their Application and are entitled to recover the filing fee from the Landlords.

Conclusion

I hereby provide the Tenants with a Monetary order in the amount of \$1,150.00 against the Landlords. This Order must be served on the Landlords 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: December 01, 2010.
