



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it within the time limits required under the Act.

At the beginning of the hearing, the Tenants admitted that they had not served the Landlord with a copy of their evidence package. Consequently, the Tenants' evidence package is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and if so, how much?

Background and Evidence

This tenancy started on May 1, 2009. The Parties later entered into a one year fixed term tenancy commencing September 1, 2009. The Tenants vacated the rental unit on August 31, 2010 and returned the keys to the Landlord on or about September 4, 2010. Rent was \$2,000.00 per month. The Tenants paid a security deposit of \$1,000.00 at the beginning of the tenancy.

The Tenants gave their forwarding address to the Landlord's agent on September 4, 2010 by e-mail. The Landlord's agent acknowledged receiving the Tenants' forwarding address in a responding e-mail 2 days later (with their e-mail attached). The Tenants said they did not give the Landlord written authorization to deduct any amounts from their security deposit however on September 21, 2010 they received a cheque in the mail from the Landlord dated September 15, 2010 for \$701.00. The Landlord had deducted amounts for various cleaning and repair expenses.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for

dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

As a general rule, electronic messaging (such as e-mail and text messaging) does not satisfy the requirement of writing as required by s. 38(1) of the Act because it is often difficult to show that the intended recipient received it. However in this case, the Landlord's agent admitted that she received the Tenants' forwarding address via e-mail and returned a portion of the Tenants' security deposit to that address. Consequently, I find that the Landlord received the Tenants' forwarding address in writing on September 6, 2010 at the latest but did not return their security deposit in full.

I also find that the Landlord did not have the Tenants' written authorization to deduct any amounts from the security deposit and did not file an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenants less the amount that was returned to them or \$1,299.00 (ie. \$2,000.00 - \$701.00 = \$1,299.00). As the Tenants have been successful in this matter, I also find that they are entitled pursuant to s. 72 of the Act to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$1,349.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 19, 2011.

Residential Tenancy Branch