



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Are the tenants entitled to return of the deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

An initial tenancy agreement was signed in 2008, followed by a second agreement signed in September 2009. Rent was \$1,600.00 per month in 2009.

In 2008 the landlord was given a cheque in the sum of \$850.00 as a deposit that was not cashed. The parties agreed that effective February 2, 2009, the landlord was given a deposit in the sum of \$800.00; a copy of the deposit information was supplied as evidence.

A move-out condition inspection was completed on April 30, 2010, at which time the tenants provided a written forwarding address which showed a street address of "4062;" the address should have read "4067." The landlord sent the tenants a partial return of the deposit some time after August 30, 2010, to "4062."

The tenants had agreed that there were some damages to the unit; but the condition inspection report did not include an agreed upon deduction that could be made from the deposit.

The landlord submitted email evidence of communication with the tenants made on May 20, 2010; the tenant replied, agreeing to some deductions from the deposit, but that blind repair costs seemed a bit high. During this hearing the tenant stated that he has reconsidered the costs claimed by the landlord and he does not now agree to any deductions from the deposit.

After May 20, 2010, the landlord sent the tenants a copy of the condition inspection report which, along with the separately mailed partial deposit refund, were returned to the landlord in the fall of 2010, marked as unknown at the address.

During the hearing the parties agreed that in early September 2010, the landlord was verbally given the correct mailing address by the tenant. The tenant had not clearly written the numerical address on the condition inspection report.

During the hearing the parties could not agree on what amounts the landlord might be entitled to for the damages acknowledged by the tenants at the end of the tenancy. The landlord had delayed returning the deposit as he was waiting for the tenants to repair the window blind. In September, 2010, the landlord again returned a portion of the deposit; with deductions that were outlined in the May 20, 2010, email sent to the tenants.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is a dispute in relation to damages, but the landlord had not submitted an Application in relation to a claim. The tenant acknowledged damages when they signed the move-out condition inspection report, but no amount of agreed upon deductions from the deposit were included on the inspection report.

After May 20, 2010, the landlord returned only a portion of the deposit, sent to the incorrect address given on the condition inspection report. This cheque was subsequently returned to the landlord. In early September, 2010, the tenant verbally provided the correct address; the landlord sent another partial deposit cheque which the

tenant has destroyed. The tenant then applied for dispute resolution as there was no agreement in relation to the amount the landlord wished to retain from the deposit.

I find that the landlord had 15 days from April 30, 2010, to return the total deposit to the tenants. The landlord did not return any portion of the deposit within 15 days, and then, once the deposit was returned, only a portion of the \$800.00 was sent to the tenants. Despite any expectation that he would be able to retain some of the deposit for damages, in the absence of a written agreement contained in the condition inspection report, the landlord had no authority to make deductions from the deposit. Further, the landlord was required by section 38 of the Act, to return the deposit, in full, within 15 days of April 30, 2010, and that did not occur.

Even though the address written on the condition inspection at the end of the tenancy included a clerical error that resulted in the first cheque being sent to the wrong address; the landlord was required to return the total deposit within 15 days and failed to do so.

Therefore, pursuant to section 38(6) of the Act, I find that the tenants are entitled to return of double the \$800.00 deposit paid.

I find that the tenant's application has merit, and I find that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$1,650.00, which is comprised of double the deposit in the sum of \$1,600.00 and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,650.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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 18, 2011.

Residential Tenancy Branch