



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for return of the security deposit, 1 month's rent compensation 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 compensation as a result of Notice given for landlord's use of the property?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 15, 2010; rent was \$1,000.00 per month, due on the first day of each month. A deposit in the sum of \$500.00 was paid at the start of the tenancy.

A notation was made on the tenancy agreement, a copy of which was not provided as evidence; that an inspection of the unit was made at the start of the tenancy. A move-out condition inspection report was not completed.

The landlord issued the tenants a typed notice, ending the tenancy as her son was going to move into the unit. The tenants agreed to move out on September 1, 2010; and are now claiming 1 month's compensation. The parties confirmed that a proper 2 month notice ending tenancy was not served to the tenants and that the tenants accepted the landlord's note ending the tenancy, by vacating the rental unit.

The landlord confirmed receipt of the tenant's forwarding address on September 21, 2010, via a September 17, 2010, email. A copy of the September 17, 2010, email was submitted as evidence, requesting return of the deposit to the tenant's forwarding address, which was provided in the email. On October 5, 2010, the tenants submitted their Application for dispute resolution.

The landlord was attempting to reach agreement with the tenants in relation to damages; the parties were not able to reach a mutual agreement during this hearing and the landlord had yet to apply, claiming against the deposit.

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 no dispute related to damages before me.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act; there is only agreement that a notation of some sort was made on the tenancy agreement at the start of the tenancy.

I find, effective September 21, 2010, that the landlord was sufficiently served with the tenant's forwarding address and that the landlord has not returned the deposit or made a claim against the deposit within fifteen days of September 21, 2010, as required by the Act. Therefore, pursuant to section 38(6) of the Act, I find that the tenants are entitled to return of double the \$500.00 deposit paid to the landlord.

As the tenants vacated the rental unit based on an invalid notice given to them by the landlord, I find that the tenant's are not entitled to compensation that would have been required as the result of an effective 2 month Notice ending tenancy for landlord's use. The tenant's remedy was to refuse to move out on the basis of notice given that did not comply with the Act. Therefore, the claim for 1 month's compensation is dismissed.

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 \$1,050.00, which is comprised of double the \$500.00 deposit paid and \$50.00 in compensation for the filing fee paid by the tenants for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,050.00. 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.

The claim for 1 month's rent compensation is dismissed.

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: February 08, 2011.

Residential Tenancy Branch