



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, RPP, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of double the security deposit, for an Order requiring the Landlord to return property belonging to the Tenants, and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord, via registered mail, at the service address noted on the Application, on March 11, 2011. The Tenant submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the return of double the security deposit paid in relation to this tenancy, whether there is a need for an Order requiring the Landlord to return personal property, and whether the Tenants are entitled to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Tenant stated that this tenancy began on October 01, 2010, that the Tenant and his brother occupied the rental unit during this tenancy, that the Tenants paid a security deposit of \$1,100.00 at the start of the tenancy, that the Landlord moved into the rental unit during January of 2011, that the Tenant's brother and the Landlord shared the living accommodations for a period of time in January of 2011 while the Tenant lived in a fifth wheel located on the residential property, that most of the Tenants' property had been moved from the house to a garage located on the residential property by January 21, 2011, and that the Tenants had vacated the rental property and removed their possessions from the garage by January 31, 2011.

The Tenant stated that the Tenants did not authorize the Landlord to retain the security deposit, that the Landlord did not return any portion of the security deposit, and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that he sent a letter to the Landlord, via registered mail, at the service address listed on the Application for Dispute Resolution on February 17, 2011, in which he provided the Landlord with his forwarding address. The Tenant submitted Canada Post documentation that corroborates this statement.

The Tenant stated that the Landlord had agreed to move a desk and a filing cabinet from the house to the garage after the Tenants had moved the rest of the property from the house in January of 2011, with the understanding that the Tenant would retrieve the property from the garage by January 31, 2011. The Tenant stated that the desk and the filing cabinet were not in the garage by January 31, 2011 and that the Landlord has not returned the Tenant's telephone calls so he has been unable to make arrangements to recover the desk and filing cabinet.

Analysis

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenants paid a security deposit of \$1,100.00, that the Landlord did not return any portion of the security deposit, that the Tenant did not authorize the Landlord to retain any portion of the security deposit, that the Landlord did not file an Application for Dispute Resolution claiming against the deposit, and that the Landlord did not have authorization to retain any portion of it.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that this tenancy had ended by January 31, 2011 and that the Tenant provided the Landlord with a forwarding address, in writing, on February 17, 2011.

Section 38(1) of the *Act* stipulates that 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 either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double the security deposit that was paid.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenants left a desk and filing cabinet in the rental unit at the end of the tenancy. In the event that the Landlord is still in possession of the desk and/or filing cabinet, I hereby Order the Landlord to return the property to the Tenant(s) in a manner that complies with section 26(1) of the Regulation, which reads:

If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to

(a) reimburse the landlord for his or her reasonable costs of

(i) removing and storing the property, and

(ii) a search required to comply with section 27 [*notice of disposition*], and

(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

Conclusion

I find that the Tenants have established a monetary claim of \$2,250.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: March 30, 2011.

Residential Tenancy Branch