Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenants' application a monetary order for double the amount of the pet damage deposit and security deposits; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Are the Landlords "landlords" as defined by the Residential Tenancy Act (the "Act")?
- Are the Tenants entitled to a monetary order pursuant to the provisions of Section 38 of the Act?

Background and Evidence

Facts on which the parties agree:

- The tenancy started on September 1, 2010 and ended on October 31, 2010.
- The Tenants paid a security deposit of $300.00; a pet damage deposit of $150.00; a "gas" deposit of $250.00; and a "hydro" deposit of $126.00 to the Landlords at the beginning of the tenancy, for a total of $826.00.
- There was no move-in or move-out condition inspection report completed by the parties.
- The Tenants provided the Landlords with written notification of their forwarding address on November 17, 2010.

The Tenants testified that they did not give the Landlords permission to keep any of their security deposits or pet damage deposits. There has been no previous order made by a dispute resolution officer allowing the Landlord to deduct a monetary award from the deposits held.

The Landlords stated that they were not “landlords” because the Tenants were their subtenants.

The Landlords have not filed any application for dispute resolution with respect to this tenancy.

Analysis

During the Hearing, the Landlords gave testimony which was irrelevant to the Tenants’ application. The Landlords have not filed an application. This matter was convened to hear the Tenants’ application and therefore I have only recorded the testimony relevant to the Tenants’ application.

The Act defines a landlord as follows:

> **"landlord"**, in relation to a rental unit, includes **any** of the following:
>
> (a) the owner of the rental unit, the owner's agent or **another person who, on behalf of the landlord,**
>
> **(i) permits occupation of the rental unit under a tenancy agreement, or**
>
> **(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement**;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

> (d) a former landlord, when the context requires this
>
> (emphasis added)

I find that the Landlords were landlords as defined in paragraph (a)(i) and (ii) of the definition. The Landlords collected rent and a security deposit from the Tenants.

The Act defines a security deposit as follows:

> **"security deposit"** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security **for any liability or obligation of the tenant respecting the residential property**, but does not include any of the following:
>
> (a) post-dated cheques for rent;
>
> (b) a pet damage deposit;
>
> (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*
>
> (emphasis added)

I find that the "hydro" and "gas" deposits were security deposits as defined by the Act. There is no provision in Act or Residential Tenancy Regulation allowing a landlord to take deposits for utilities.

A security deposit is not the property of a landlord. It is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act.

The tenancy ended on October 31, 2010. The Tenants provided the Landlords with written notification of their forwarding address on November 17, 2010. Therefore, pursuant to the provisions of Section 38(1) of the Act, the Landlords had 15 days from receipt of the Tenant's forwarding address (November 30, 2010) to either:

1. repay the security deposits and pet damage deposit in full; or
2. make an application for dispute resolution claiming against the deposits.

To date, the Landlords have not returned the security deposits or the pet damage deposits, nor have they filed for dispute resolution against the deposits.

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 and pet damage deposit. Therefore, the Tenants are entitled to a monetary order for double the amounts of the deposits, in the amount of $1,652.00 ($826.00 x 2).

The Tenants have been successful in their application and are entitled to recover the cost of the $50.00 filing fee from the Landlords.

Conclusion

I hereby grant the Tenants a Monetary Order against the Landlords in the amount of **$1,702.00.** 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: March 21, 2011.