



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 dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to each Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 1, 2010, as supported by the documentary evidence. The Landlords confirmed receipt of the hearing packages.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective January 15, 2010 and was set to expire January 15, 2011. The parties mutually agreed to end the tenancy as of November 30, 2010. The Tenants paid the full month's rent for November. Rent was payable on the first of each month in

the amount of \$1,450.00 and a security deposit of \$725.00 was paid on approximately December 6, 2010. The parties conducted a walk through at the beginning of the tenancy and again at the end of the tenancy however no inspection reports were completed or signed. The Tenants provided the Landlords with their forwarding address via e-mail on November 15, 2010.

The Tenants testified they moved their possession out of the unit by November 6, 2010 and spent over five hours cleaning the unit on November 7, 2010. They patched the walls and attempted to paint the walls with the paint left at the unit by the Landlords however it was the wrong paint. They hired a professional carpet cleaning company who cleaned all of the carpets on November 9, 2010. They attend the unit on November 14, 2010 to do a walk through with the Landlord. When they requested the return of their security deposit the Landlord began to call them names and displayed what they would call “unacceptable behaviour” in front of the Tenants’ young daughter. The male Tenant stated that to avoid any further confrontation they handed over the keys and walked away.

The Landlords testified and confirmed they do not have an Order allowing them to keep the security deposit, they have not made an application to keep it, and they do not have the Tenants’ written permission to withhold it. They stated that if they acted so unreasonable why would they have agreed to let the Tenants out of the lease early? They do not believe they should have to pay the Tenants double the amount of the security deposit because they did not look into the rules.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is

important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports the Landlords did not apply for dispute resolution to keep the security deposit, they do not have an Order allowing them to keep the security deposit, and they do not have the Tenants' written consent to retain the security deposit.

The evidence supports that the Tenants provided the Landlords with their forwarding address on November 15, 2010 and the tenancy ended November 14, 2010 as the Tenants had vacated the property, the move-out walk through was conducted and keys turned over, in accordance with section 44(1)(c) of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than November 30, 2010. The Landlords did not return the deposit and did not file for dispute resolution.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double the balance owed of their security deposit plus interest.

The Tenants have succeeded with their application; therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled the Security Deposit 2 x \$725.00	\$1,450.00
Interest owed on the Security Deposit of \$725.00	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,500.00

I have included with my decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND in favor of the Tenants’ monetary claim. A copy of the Tenants’ decision will be accompanied by a Monetary Order for **\$1,500.00**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court 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: April 13, 2011.

Residential Tenancy Branch