



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenants' application for a Monetary Order for double the amount of the security deposit paid to the Landlords.

The parties gave affirmed testimony at the Hearing.

The Tenants served each of the Landlords with the Notice of Hearing documents, by registered mail sent November 29, 2010 to the address the Landlords provided on the tenancy agreement. The Tenants provided copies of the registered mail receipts and tracking numbers in evidence.

Issues to be Decided

- are the Tenants entitled to a Monetary Order for double the security deposit?

Background and Evidence

The Tenants gave the following testimony:

- The Tenants paid the Landlords a security deposit in the amount of \$1,125.00 in September, 2009.
- The Tenants moved out of the rental unit on September 2, 2010.
- The Tenants gave the Landlords their forwarding address in writing on September 2, 2010, by mailing it to the Landlords at the address the Landlords provided on the tenancy agreement.

- The Tenants did not agree that the Landlords could retain any of the security deposit. To date, the Landlords have not returned any of the security deposit in the Tenants.

The Landlords gave the following testimony:

- The Landlords did not receive the Tenants' forwarding address until they received the Notice of Hearing documents when they returned from overseas on December 24, 2010.
- The Landlords have not returned any of the security deposit to the Tenants and have not filed an application against the security deposit.

Analysis

A security deposit is held in a form trust by a landlord for the tenant, to be applied in accordance with the provisions of the Act.

I accept the Tenants' testimony that they mailed the Landlords written notification of their forwarding address by regular mail, in accordance with the provisions of Section 88(c) of the Act. It is also possible that the mail may have been mis-delivered, or for some other reason the Landlords may not have received the Tenants' letter. However, what is clear is that the Landlords did receive the Tenants' forwarding address in writing when they received the Notice of Hearing documents, which the Landlords state was on December 24, 2010.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The tenancy ended on September 2, 2010. The Landlords testified that they received the Tenants' forwarding address in writing on December 24, 2010. The Landlords did not return the security deposit within 15 days of receipt of the Tenants' forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

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. Therefore, I find that the Tenants are entitled to a Monetary Order for double the security deposit, in the amount of \$2,250.00. No interest has accrued on the security deposit.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$2,250.00** for service upon the Landlords. This Order 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: April 19, 2011.

Residential Tenancy Branch