



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on February 11, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy was set to start on January 15, 2011 as a month to month tenancy, but the Tenants did not move in to the rental unit. The Tenants claim the unit was not in a condition to move into therefore they gave the Landlord written notice on January 16, 2011 that they were ending the tenancy. The Landlord said the tenancy ended on February 28, 2011. Rent was \$925.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$462.50 on January 12, 2011.

The Tenant said they did not move into the unit as it was not clean or painted when they were to move in on January 15, 2011 as stated in the tenancy agreement. The Tenant said by not having the unit ready to move into the Landlord had breached the tenancy agreement and therefore the Tenant said the tenancy was not valid. The Tenant said he requested his ½ a month rent of \$462.50 and his security deposit of \$462.50 to be returned to him. The Tenant said the Landlord has not returned his rent or security deposit therefore he made his application for dispute resolution.

The Landlord said he did not return the rent or security deposit because he believed the Tenant owes rent for ½ of January, 2011 in the amount of \$462.50 and rent for February, 2011 in the amount of \$925.00 as the Tenant gave written notice in January to end the tenancy for the end of February, 2011.

The Landlord said he did receive a forwarding address in writing from the Tenant on February 11, 2011 with the hearing package and he did not return the deposit or make an application with the *Residential Tenancy Branch* to retain the security deposit for unpaid rent.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from that the Tenant did give the Landlord a forwarding address in writing on February 11, 2011 and the tenancy ended on or before February 28, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenants and grant an order for double the security deposit of \$462.50 in the amount of \$462.50 X 2 = \$925.00.

As the Tenants were successful in this matter I further order the Tenants to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$975.00 will be issued to the Tenants. This Monetary order represents double the security deposit in the amount of \$925.00 and the filing fee of \$50.00.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$975.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims 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*.

Residential Tenancy Branch