



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlords and to recover the cost of the filing fee from the Landlords.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Was there a tenancy agreement between the parties?
- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenants testified that this tenancy was to begin on April 1, 2011, but they did not move into the rental unit. They stated that monthly rent was to be \$1,600.00 per month and that they paid the Landlords a security deposit in the amount of \$900.00. The Tenants testified that they provided their written notice on March 28, 2011, that they would not be moving into the rental unit because of personal reasons. At the same time, they provided the Landlords with their forwarding address and asked for the return

of their security deposit. The Tenants submitted that they did not have a tenancy agreement with the Landlords, did not move into the rental unit, and that therefore they were entitled to all of the security deposit back. They testified that the Landlords returned \$100.00 of the security deposit.

The Landlords testified that the Tenants paid the security deposit on March 2, 2011. The Landlords stated that they did not receive the Tenants' written notification that they would not be moving in on April 1 until April 2, 2011. The Landlords testified that they were able to re-rent the property for April 15, 2011, and therefore lost ½ a month's rent. The Landlords submitted that they applied \$800.00 of the security deposit towards the rent for April 1 – 14, 2011, because they believed they had an agreement with the Tenants that they could do so. The Tenants denied having any such agreement with the Landlord.

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

Section 2 of the Residential Tenancy Act (the "Act") provides:

What this Act applies to

- 2** (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.
- (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

Section 13(1) of the Act requires the Landlords to prepare a tenancy agreement in writing however the Act defines a tenancy agreement as,

"tenancy agreement" means an agreement, **whether written or oral, express or implied, between a landlord and a tenant** respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

(emphasis added)

I find that the parties entered into an oral tenancy agreement on March 2, 2011, when the Tenants paid the security deposit and agreed upon the date the tenancy was to start and the monthly rent to be paid. Therefore, having found that there was a tenancy agreement between the parties, I find that I have jurisdiction under Section 2 of the Act to decide this matter.

The security deposit is held in a form of trust by the Landlords for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless the Landlords have the Tenants' written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of the Tenants' forwarding address in writing, whichever shall last occur, the Landlords have 15 days to either:

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

The Landlords did not have written permission from the Tenants to retain the security deposit. The Landlords received the Tenants' forwarding address in writing on April 2, 2011. The Landlords did not return the security deposit within 15 days of receipt of the Tenants' forwarding address, nor did the Landlords file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if the Landlords do not comply with Section 38(1) of the Act, the Landlords **must** pay the Tenants 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 \$1,600.00.

I explained to both parties that, although the Landlords' right to claim against the security deposit is extinguished under Section 38(6) of the Act, the Landlords retain the right to make application for compensation under Section 67 of the Act.

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 provide the Tenants a Monetary Order in the amount of **\$1,650.00** 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: August 10, 2011.

Residential Tenancy Branch