



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application: MNSD; MNDC; FF

Landlord's application: MNR; MND; MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek a Monetary Order for double the security deposit; and to recover the cost of the filing fee from the Landlord

The Landlord seeks a Monetary Order for unpaid rent, damages to the rental property and compensation for damage or loss; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant AH gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents, by registered mail, to the Landlord at his residential address, on April 21, 2011. The Tenant provided copies of the registered mail receipts and tracking numbers in evidence.

Based on the documentary evidence provided by the Tenant, I am satisfied that the Landlord was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1(c) of the Act. Service in this manner is deemed to be effective 5 days after mailing the documents (April 26, 2011). Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing continued in his absence.

The Landlord's application was scheduled to be heard on August 12, at 9:30 a.m. The Tenants signed into the Hearing at 9:30 a.m. and were ready to proceed. By 9:40 am., the Landlord had not yet signed into the Hearing. Therefore the Landlord's application is dismissed without leave to reapply.

Issues to be Decided

- Are the Tenants entitled to a monetary award in the amount equivalent to double the security deposit, pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The Tenant AH provided the following testimony:

The Tenants paid a security deposit in the amount of \$650.00 to the Landlord on March 24, 2010. The tenancy ended on March 31, 2011.

The Tenant testified that there was no move-in condition report prepared at the beginning of the tenancy. He stated that the Tenants met with the Landlord at the end of the tenancy for the move-out condition inspection, but no inspection took place. Instead, the Landlord told the Tenants that he would not return their security deposit because of a damaged ceiling in the rental unit. The Tenant testified that the damage was not caused by the Tenants.

The Tenants provided evidence that the Landlord refused to make repairs to the rental unit, including repairing a broken bathroom window and making repairs to the heating system. The Tenants submitted that the parties had a mutual agreement that the tenancy would end.

The Tenant testified that he told the Landlord to send the security deposit to the rental unit and that it would be automatically sent to their forwarding address because they had provided Canada Post with their forwarding address. The Tenant submitted that the Landlord received the Tenants' forwarding address in writing when he was served with the Tenants' application for dispute resolution.

The Tenant testified that he did not give the Landlord permission to retain any of the security deposit and that there are no previous orders from the director with respect to the security deposit.

Analysis

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

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and **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.

I find that the Landlord received the Tenants' forwarding address in writing on April 26, 2011, when he was served with the Notice of Dispute Resolution documents. The

documents contained a copy of the Tenants' Application for Dispute Resolution which clearly indicates the Tenants' address for service of documents. The Application was signed by the Tenant AH. The Landlord did not return the security deposit within 15 days of receipt of the Tenants' forwarding address.

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.

Section 38(5) of the Act states:

38 (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for **damage** against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(emphasis added)

The Landlord filed his application claiming against the security deposit on May 6, 2011, which is within the 15 days allowed. The Landlord's application was against the security deposit for damages **and rent**. I find that the Landlord's right to claim against the security deposit for damages was extinguished under the provisions of Section 38(5) of the Act.

In support of the Landlord's claim for unpaid rent, the Landlord's Application for Dispute Resolution states "(the Tenants) failed to give notice of vacating the suite". The Tenants submitted that they had a mutual agreement to end the tenancy, but did not provide a copy of the Mutual End of Tenancy Agreement. Section 44(1)(a)(c) of the Act requires a mutual end of tenancy agreement to be in writing.

The Landlord did not extinguish his right to claim against the security deposit for unpaid **rent**, and filed his application within 15 days of receipt of the Tenant's forwarding address. Therefore, I find that the Tenants are not entitled to double the amount of the security deposit. I hereby provide the Tenants a monetary order for return of security deposit, in the amount of \$650.00.

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

Conclusion

The Landlord's application is dismissed in its entirety.

I hereby provide the Tenants a Monetary Order in the amount of **\$700.00** for service upon the Landlord. 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 16, 2011.

Residential Tenancy Branch