

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenants' application for a monetary order for double the security deposit and pet damage deposit paid to the Landlord.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the amount of the security deposit and pet damage deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on November 1, 2009 and ended on March 31, 2011. Monthly rent was \$850.00, due on the first day of each month. In addition to monthly rent, the Tenants paid \$200.00 a month for utilities. The Tenants paid a security deposit in the amount of \$425.00 and a pet damage deposit in the amount of \$425.00 on October 31, 2009.

There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy. The parties did an informal walk through at the beginning of the tenancy. On April 5, 2011, the parties did an inspection and the Landlord noted several damages on a sheet of paper which he provided to the Tenants. The Landlord testified that the

Tenants verbally agreed that the Landlord could retain \$341.00 from the security deposit. The Tenants deny this, stating that they were upset that the Landlord kept any of the security deposit. The Landlord provided the Tenants with the balance of the deposit, \$509.00, on April 5, 2011. The Tenants provided the Landlord with written notification of their forwarding address on April 5, 2011.

The Landlord did not file an application for dispute resolution against the security deposit and pet damage deposit.

Analysis

A security deposit and a pet damage deposit are held in a form of trust by the Landlord for the Tenant, 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 written consent to retain a portion of the deposits) 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 deposits in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the deposits.

The Landlord testified that he received the Tenants' forwarding address in writing on April 5, 2011. The Landlord did not return all of the deposits within 15 days of receipt of the Tenants' forwarding address, nor did the Landlord file for dispute resolution against the deposits. The Tenants did not provide their written consent that the Landlord could retain any of the deposits.

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. The Landlord returned \$509.00 of deposits on April 5, 2011. Therefore, I find that the Tenants are entitled to a monetary order calculated as follows:

Amount of deposits paid	\$850.00
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Less amount returned	<u>-\$509.00</u>
Subtotal	\$341.00
	<u> X 2 </u>
TOTAL	\$682.00

No interest has accrued on the deposits.

A copy of Section 38 of the Act accompanies this Decision.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$682.00** 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 19, 2011.

Residential Tenancy Branch