



Dispute Resolution Services

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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 double their security deposit.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on May 25, 2011. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on September 1, 2003 as a 6 month fixed term tenancy and then renewed as a month to month tenancy. The tenancy ended January 30, 2011. Rent was \$780.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$310.00 on September 1, 2003.

The Tenant said that they moved out of the rental unit on January 30, 2011 and sent the Landlord their forwarding address and a request for the return of his security deposit in writing by registered mail on April 11, 2011. The Tenant said no move in condition inspection and no move out condition inspection reports were completed. The Tenant continued to say that he hired two janitors for \$190.00 to clean the unit prior to his moving out. The Tenant said the Landlord has not returned his security deposit of \$310.00 and he understands that he can request double his security deposit back.

The Landlord said the Tenant left the unit in an unclean state and he had to hire a janitor for \$280.00 to clean and repair the rental unit. The Landlord said the Tenant agreed on the telephone that the Landlord could keep his security deposit to pay for the cleaning costs. The Tenant said he did not agree to the Landlord keeping his security deposit.

The Landlord presented the janitor that cleaned the rental unit as a witness. Witness G.T. said he charged the Landlord \$280.00 to clean the unit and paint some of the rental unit. The Witness said he saw the other janitors who started to clean the unit, but he said they left the rental unit unclean as it was a big job to clean the unit.

The Landlord continued to say he did not complete and sign any condition inspection reports. He did not make an application to the Residential Tenancy Branch to retain the Tenants' security deposit and he did receive the Tenants' forwarding address in writing by registered mail on April 12, 2011.

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 accept the Tenants' testimony and registered mail tracking information that he gave the Landlord a forwarding address in writing on April 12, 2011. The Landlord did not repay the 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 by April 27, 2011. Consequently I find for the Tenants and grant an order for double the security deposit of \$310.00 in the amount of $\$310.00 \times 2 = \620.00 plus the accrued interest on the security deposit \$310.00 from September 1, 2003 to August 31, 2011 in the amount of \$10.99.

As the Tenants have been successful in this matter, they are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. I order pursuant to s. 38(4) and s. 72 that the Tenants will receive a monetary order for the following:

Double the security deposit (2 x 310.00)	\$620.00	
Accrued interest on the security deposit	\$ 10.99	
The filing fee for this proceeding	\$ 50.00	
Sub total		\$680.99
Balance owing		<u>\$680.99</u>

Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$680.99 to the Tenants. 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