



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution for an order for recovery of their security deposit, doubled, and recovery of the filing fee for the Application.

The Tenants and the Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

The testimony indicates that this tenancy started on July 23, 2010, ended on February 28, 2011, and the Tenants paid a security deposit of \$425.00 on July 23, 2010.

The Tenant testified that she gave the Landlords their written forwarding address in a letter on February 28, 2011.

The parties were in prior dispute resolution due to the Landlords' application, resulting in the Tenants being granted a monetary order in the amount of \$425.00, which was the amount of their security deposit.

The Tenants submit that the Landlords have not paid the amount of the monetary order, \$425.00, and due to this, they are entitled to receive a monetary order for double this amount.

The Landlord acknowledged that he received the Tenants' written forwarding address on February 28, 2011, and filed an application for dispute resolution on March 15, 2011.

The Landlord further acknowledged that he has not returned the security deposit, or paid the monetary order.

The Landlord accepted that he owed and agreed he would pay the amount of \$425.00, but that he disputed that he owed the 10% the Tenants charged in a demand letter to the Landlords.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In order to justify payment of loss under section 67 of the *Act*, the Applicants/Tenants bear the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the applicants pursuant to section 7.

As to the Tenants' claim for a monetary order for double their security deposit, section 38 of the Residential Tenancy Act (the "Act") states that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay or make an application for dispute resolution claiming against the security deposit.

The evidence and testimony supports that the Tenants provided the Landlords with their written forwarding address on February 28, 2011.

Although the Landlords were not successful with their application, I find that the Landlords fulfilled the requirements of Section 38(1) of the *Act* by filing for dispute resolution claiming against the Tenants' security deposit within the allowed 15 days after receiving the Tenants' written forwarding address.

As I have found that the Landlords complied with the Act, I therefore **dismiss** the Tenants' application, **without leave to reapply**.

As I have dismissed the Tenants' application, I decline to award the Tenants the filing fee.

The Tenants are entitled to a return of their security deposit; however the Tenants have previously been granted a monetary order in the amount of \$425.00, which they are still at liberty to file in the Provincial Court of British Columbia (Small Claims) should the Landlords fail to comply with that monetary order.

Conclusion

The Tenants' application is dismissed, without leave to reapply.

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: September 06, 2011.

Residential Tenancy Branch