



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 a security deposit plus compensation equal to the amount of the deposit due to the Landlords' alleged failure to return it as required by the Act and to recover the filing fee for this proceeding.

The Tenants said that on June 24, 2011, they served the Application and Notice of Hearing (the "hearing package") on the corporate Landlord by leaving the hearing package at its place of business. The Tenants said they also served the Landlord, J.L., with the hearing package on June 24, 2011 by sending it via courier to his address listed on the tenancy agreement. Based on the evidence of the Tenants, I find that the Landlords were served with the hearing packages as required by s. 89 of the Act and the hearing proceeded in the absence of the corporate Respondent.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of a security deposit and if so, how much?

Background and Evidence

This month-to-month tenancy started on April 19, 2010 and ended on May 31, 2011 when the Tenants moved out. Rent was \$850.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$425.00 at the beginning of the tenancy. The Tenants participated in a move out condition inspection on May 31, 2011 and wrote their forwarding address on the condition inspection report at that time. The Tenants said they did not give the Landlords their written authorization to keep the security deposit and it has not been returned to them.

The Landlord's agent, L.B., said the Landlords' head office sent the Tenants' security deposit cheque to the Landlord, J.L., on June 3, 2011 via regular mail, however due to an intervening mail strike, he did not receive it on time. Consequently, L.B. said the Landlord, J.L. made arrangements on June 15, 2011 to have a replacement cheque sent to him via courier on June 21, 2011. L.B. claimed that the replacement cheque was given to the building manager, Dave, who then left a message for the Tenants that they could pick it up. The Tenants denied these matters. The Tenant, J.C., claimed that he spoke to the Landlord, J.L., on or about June 16, 2011 and asked him where the security deposit was and in response J.L. said 'you'll get it when you get it' and then

hung up. J.C. then said he spoke with the building manager, Dave, on or about July 8, 2011 and the building manager said he had not received a cheque from J.L. and he had not left any telephone messages for the Tenants.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on May 31, 2011 and that the Landlords received the Tenant's forwarding address in writing on May 31, 2011. I also find that the Landlords did not return the Tenants' security deposit of \$425.00, did not have the Tenants' written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. Although the Landlord, J.L., argued that his attempts to comply with s. 38(1) of the Act were frustrated by an intervening postal strike, I find that this is not the case. Instead, I find that it was the Landlords' business policy to send a cheque from head office in another province to J.L. who would then send it to another party who was then to hold it for the Tenants that caused the delay. Furthermore, I find that there is little evidence that J.L. sent replacement funds for the Tenants to pick up as he claimed.

Consequently, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit or \$850.00 to the Tenants. As the Tenants have been successful in this matter, they are also entitled pursuant to s. 72(1) of the Act to recover from the Landlords the \$50.00 filing fee they paid for this proceeding.

Conclusion

A Monetary Order in the amount of **\$900.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 27, 2011.

Residential Tenancy Branch