



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord submitted late evidence totaling 14 pages; this evidence was not considered. The tenant did not receive this evidence.

The landlord's agent testified that the landlord is at a disadvantage due to language problems and a misunderstanding of the rules. I explained that the landlord is at liberty to have an agent assist her in the operation of her rental units, to ensure her compliance with all required legislation.

Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid?

Are the tenants entitled to return of 12 days rent paid as compensation for damage or loss in the sum of \$533.33?

Are the tenants entitled to filing fee costs?

Background and Evidence

This 1 year fixed-term tenancy commenced on February 25, 2011; rent was \$1,600.00 per month due on the 25th day of each month. A deposit in the sum of \$800.00 was paid.

The tenants moved out, by agreement on May 14, 2011. During the hearing the parties agreed that on May 15, 2011, new occupants took possession of the rental unit.

The landlord confirmed that the tenant's letter dated May 27, 2011, sent by registered mail, was received by another agent, the landlord's sister. The letter was then given to the agent present at this hearing. The tenants testified that the mail was successfully delivered on June 2, 2011. The letter requested return of the deposit and provided the tenant's written forwarding address. The landlord did not return the deposit and did not apply, within 15 days of June 2, 2011, claiming against the deposit. A copy of the letter was supplied as evidence.

The tenants paid rent to May 24, 2011, and have requested return of rent from May 14 to 25th. The landlord stated the tenants are entitled to 8 days, as they moved into the unit 2 days early and did not pay any rent for those days at the start of the tenancy. The tenant's confirmed they moved in early, but have claimed for the total number of days the landlord was overpaid at the end of the tenancy.

The parties are disputing a damages claim and a penalty the landlord states the tenants agreed to pay; these matters were not addressed during this hearing.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenants.

I find that the landlord received the tenant's May 27, 2011, letter on June 2, 2011; five days after it was sent via registered mail; as provided by section 90 of the Act. As the landlord did not return the deposit or claim against it within 15 days I find that the tenants are entitled to return of double the \$800.00 deposit paid to the landlord.

The landlord confirmed that rent was paid for a period of time during which new occupants had moved in and paid rent. I find that the tenants vacated the rental unit on May 14 and had paid rent until May 24, 2011, inclusive. There is no dispute that the landlord allowed the tenancy to end and that those new occupants immediately moved in; avoiding any loss of rent revenue to the landlord. Therefore, I find that the tenants are entitled to return of the equivalent of 10 days rent, from May 15 to 24th, 2011 inclusive, in the sum of \$526.00.

I find that the tenant's application has merit, and I find that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$2,176.00, which is comprised of double the deposit in the sum of \$1,600.00; damage or loss of \$526.00 and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$2,176.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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 20, 2011.

Residential Tenancy Branch