



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began February 30, 2011 with and end date of March 11, 2011, monthly rent of \$725.00 and the tenants paid a security deposit of \$400.00.

The tenants testified that when they rented their unit they did not realize that they were in fact sub-letting and that the landlord was really the primary tenant. The tenants stated that they only became aware of this information when the landlord came to the rental unit as the rent for the house had not been paid. The tenants decided that they did not want to stay in the rental unit as the landlord was threatening eviction although an eviction notice was never served on the tenants. The tenants stated that they then vacated the rental unit on March 11, 2011.

The tenants stated that as they had to find accommodations elsewhere they were applying for return of the \$725.00 March 2011 rent that had been paid.

The landlord testified that he did owe the tenants the balance of their security deposit and that he had already returned \$60.00 of the security deposit to the tenants. The landlord stated that he had spent money on repairs and painting prior to vacating the rental unit and that was why he had held some of the security deposit back.

The tenants in this application are seeking return of double the security deposit in addition to the \$725.00 rent that was paid for the month of March 2011.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to return of double their security deposit.

Accordingly I find that the tenants are entitled to a monetary order for \$800.00.

As the landlord has returned \$60.00 of the tenant's security deposit, this amount will be deducted from the \$800.00 awarded to the tenants.

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (1) 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.*
- (6) 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.***

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to return of the March 2011 rent.

The tenants did not provide the landlord with proper notice prior to vacating the rental unit nor did the tenants seek to remedy any issues with the tenancy through this office. Therefore this portion of the tenant's application is dismissed without leave to reapply.

As the tenants have had some success in their application the tenants are entitled to recover \$25.00 of the \$50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for **\$800.00** (less the \$60.00 already returned by the landlord). The tenants are also entitled to recover \$25.00 of the \$50.00 filing fee. I grant the tenants a monetary order under section 67 of the *Act* for **\$765.00**.

If the amount is not paid by the landlord, 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: October 3, 2011.

Residential Tenancy Branch