



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of their security, doubled, and to recover the cost of the filing fee from the landlord for this application.

The landlord did not appear at the hearing.

The tenant testified and supplied evidence that he served the Application and Hearing Package upon the landlord via registered mail on September 22, 2011. The tenant supplied proof of the registered mail and testified that his online search revealed that the package was delivered.

Having been satisfied the tenants served the landlord in a manner that complies with section 89 of the Residential Tenancy Act (the "Act"), I proceeded to hear from the tenants without the landlord present.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in documentary form prior to the hearing and make submissions to me.

Issue(s) to be Decided

Has the landlord breached the tenancy agreement, Residential Tenancy Act (the "Act") and regulations entitling the tenants to the return of double their security deposit and to recover the filing fee?

Background and Evidence

The tenant testified that this tenancy began on November 1, 2010, ended on August 31, 2011, monthly rent was \$1,000.00 and the tenants paid a security deposit of \$500.00, in two instalments of \$250.00 each in September and October, 2010.

The tenant testified that the landlord knew of their forwarding address prior to their moving out, as the tenants moved to another unit in the landlord's residential property. Additionally, the tenant submitted that the forwarding address was provided on the condition inspection report.

The tenant stated that he has requested a copy of the condition inspection report, but that the landlord has refused to supply a copy. The tenant submitted that a deduction of \$35.00 for chimney cleaning was charged; however he disagreed with the charge.

The tenant stated that as of the day he filed his application, September 20, 2011, they had not received a refund of the security deposit.

The tenant testified and supplied evidence that he received a partial refund after filing his application, in the amount of \$465.00, which reflects the deduction for the chimney cleaning.

The tenant supplied evidence, a copy of the envelope, which contained the security deposit cheque refund. The envelope showed that the refund cheque, although dated September 15, 2011, was mailed by the landlord on September 20, 2011.

Analysis

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

In the absence of the landlord, the tenants' evidence and testimony will be preferred.

I grant the tenants' application for Dispute Resolution and Order that the landlord pay the tenant double their security deposit pursuant to section 38(6) of the *Act*.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept the evidence of the tenants that the landlord had the tenants' forwarding address prior to the end of the tenancy, due to the tenants' relocation in the residential property, and that the landlord did not file an application for Dispute Resolution making a claim against the tenants' security deposit. As the landlord had the tenants forwarding

address by the end of the tenancy, which was on August 31, 2011, I find the landlord did not comply with the Act by returning the tenants' security deposit by September 15, 2011; instead it was returned on September 20, 2011, when it was mailed.

I also have no evidence before me by the landlord and the tenant was unable to supply evidence of the condition inspection report, due to the landlord's failure to supply the tenants with a copy, which would indicate that the tenants authorized the landlord to make deductions from the security deposit. I therefore find that the landlord was in contravention of the Act when they made a deduction for the chimney cleaning prior to returning a portion of the security deposit.

Having granted the tenants' application, I also grant the tenants' request to recover the filing fee paid for submitting this application.

I find that the tenants have established a total monetary claim for the sum of **\$585.00**.

This sum is comprised of **double** the security deposit of **\$500.00**, plus the **\$50.00** filing fee. From this sum I deduct the sum of **\$465.00** which the landlord has already returned to the tenants.

Conclusion

I grant the tenants' application and have issued a monetary Order for the sum of **\$585.00**. The landlord is directed to forthwith transmit the amount of \$585.00 to the tenants to their new address listed on the cover page.

I am enclosing a monetary order for \$585.00 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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: December 08, 2011.

Residential Tenancy Branch