



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 tenants have requested a monetary Order for return of double 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. The landlord did not serve their evidence to the tenants due to confusion in relation to the address provided; therefore that evidence was set aside. The landlord was at liberty to provide oral testimony.

Preliminary Matter

I have amended the claim made in the application to reflect the correct amount of deposit paid; \$650.00.

Issue(s) to be Decided

Are the tenants entitled to return of double the \$650.00 deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

The parties confirmed that the tenancy commenced on May 1, 2010 and ended in September, 2011. A copy of a tenancy agreement was supplied as evidence which indicated a deposit in the sum of \$650.00 was paid.

The landlord confirmed receipt of a note sent by registered mail on September 26, 2011, requesting return of the deposit to a specific address. The note also gave the landlord permission to deduct carpet cleaning costs from the deposit.

The landlord stated she attended at the Residential Tenancy Branch office on 3 occasions because she believed the tenant's address was incorrect. The landlord also testified that she wanted nothing further to do with the tenants and that she only wanted to keep the deposit, rather than submit a claim for all of the damage caused by the tenants.

The landlord confirmed that they did not return the deposit to the address provided by the tenants. At one point the landlord attended at the given address and was told the tenant did not live there. The landlord did submit a claim for damages, but the application did not proceed due to service issues.

During the hearing the tenant was asked to provide a complete postal code for the service address indicated on her application; the tenant chose to provide a new address which was recorded by the landlord. The address given to the landlord by the tenants, as a forwarding address, was her brother-in-law's home. The tenant understood my decision would be mailed to her new address.

The tenant agreed to a deduction in the sum of \$134.35 from the deposit, for carpet cleaning costs.

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. In this case there is no dispute related to damages before me; the landlord has indicated she wishes to submit a claim.

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 tenant. Confusion over the address may have occurred; but the landlord has testified she did not wish to return the deposit and kept it in lieu of damages caused by the tenants.

Even if the landlord went to the address and discovered the tenant did not live at that address or the address was incomplete, the landlord only had to mail the deposit to the address provided and retain any returned mail as evidence the deposit had been sent to the address provided by the tenant. The landlord is not required to examine the address for accuracy; only to return the deposit to the address given.

Therefore, as the landlord has indicated she retained the deposit as a result of damage and that the deposit was not sent to the address provided by the tenants, I find that the tenants are entitled to return of double the deposit, as provided by section 38(6) of the Act. The amount of the monetary Order will be adjusted by \$134.35, for the agreed-upon carpet cleaning costs.

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.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for each party.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$1,350.00; less \$134.35 for carpet cleaning, which is comprised of double the deposit paid and \$50.00 in compensation for the filing fee paid by the tenants for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,215.65. 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: January 12, 2012.

Residential Tenancy Branch