



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of their security deposit, doubled.

The landlord did not appear at the hearing. The tenants testified and supplied evidence that they served the Application and Notice of Hearing Package upon the landlord via registered mail on January 18, 2012, to the address of the landlord. The tenant submitted proof that the registered mail was refused by the addressee, the landlord.

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 attending tenant without the landlord present.

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

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The parties were in a previous Dispute Resolution hearing, on December 21, 2011, on the respective parties' cross applications, the Decision for which resulted in the landlord being granted a monetary award in the amount of \$349.59. The Dispute Resolution Officer in the Decision of December 21, 2011, ordered that the landlord withhold the amount of \$349.59 from the tenants' security deposit of \$550.00 in satisfaction of the landlord's monetary claim, and directed that the landlord return the remaining portion of the tenants' security deposit, in the amount of \$175.41 within 15 days, pursuant to section 38 of the Residential Tenancy Act (the "Act").

The tenants' claim is in the amount of \$725.41, which is comprised of their original security deposit, doubled, less the amount of the landlord's monetary award in the previous dispute resolution.

The tenant testified that the landlord had not returned the remaining portion of their security deposit, as of the day of the hearing.

Analysis

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

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenantS to prove damage or loss.

I find I cannot increase the tenants' security deposit to the original amount of \$550.00, due to the previous Decision of December 21, 2011, reducing the amount of the security deposit held by the landlord to \$175.41. I do, however, find that the landlord was ordered to return the remaining amount of the tenants' security deposit of \$175.41 through that Decision, and to comply with section 38 of the Act. In other words, the DRO in the previous Decision ordered that the landlord return to the tenants the amount of \$175.41 within 15 days of the Decision, dated December 21, 2011.

I find that the landlord has not returned the security deposit and is now subject to section 38 (6) of the Act and must pay the tenants double their security deposit.

I find the tenants' application had merit and I award them the filing fee of \$50.00.

I therefore find that the tenants have established a **monetary claim** in the amount of **\$400.82**, comprised of their remaining security deposit held by the landlord in the amount of \$175.41, doubled, and the filing fee of \$50.00.

Conclusion

I grant the tenants' application and have issued a monetary Order for the sum of **\$400.82**. I direct the landlord to issue the amount of \$400.82 forthwith to the tenants.

I am enclosing a monetary order for **\$400.82** with the tenants' Decision. This monetary order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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: February 01, 2012.

Residential Tenancy Branch