



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act as well as compensation for an over payment of rent and to recover the filing fee for this proceeding.

The Tenant, W.H., said he served the Landlord with the Application, Notice of Hearing and evidence package by registered mail on December 28, 2011. According to the Canada Post online tracking system, the Landlord received this mail on January 3, 2012. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act.

The Landlord submitted a letter appointing an agent to attend the hearing on her behalf however no one attended the hearing on behalf of the Landlord. The Landlord's agent submitted documentary evidence however the Tenants claimed that they were not served with those documents. I find that much of the documentary evidence provided by the Landlord's agent is not only hearsay but also deals with an alleged claim for damages advanced by the Landlord. Given that the Landlord did not file an application for dispute resolution to make a claim against the security deposit for damages to the rental unit, I find that the Landlord's evidence is irrelevant. For all of these reasons, I find that the Landlord's evidence is inadmissible.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of a security deposit and if so, how much?
2. Are the Tenants entitled to be compensated for an overpayment of rent?

Background and Evidence

This tenancy started in September 2006 and ended on November 15, 2011 when the Tenant moved out. Rent was \$500.00 per month. The Tenant, W.H., paid a security deposit of \$275.00 on September 15, 2006. The owner of the rental property passed away in 2010 and the property (and estate) was subsequently registered in the name of the deceased's Executrix (ie. the Landlord named on the Tenants' application in this matter).

In a previous proceeding between the Tenants and the Landlord's agent on November 1, 2011, the Tenants' application to cancel a 2 Month Notice to End Tenancy for Landlords' Use of Property dated October 15, 2011 was granted. The Tenants gave written Notice on October 16, 2011 that they were ending the tenancy effective November 15, 2011. The Tenants paid rent for the period, October 15 – November 14, 2011, but claim they should be entitled to recover rent for that period as compensation payable as a result of receiving the 2 Month Notice.

The Tenants said neither a move in nor a move out condition inspection report was completed by the Landlord. The Tenants said on November 25, 2011 they sent the Landlord their forwarding address in writing via registered mail. The Tenants said they did not give the Landlord written authorization to keep the security deposit and it has not been returned to them.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however she may not retain the security deposit to pay for those damages.

I find that the Landlord received the Tenants' forwarding address in writing on December 1, 2011 but did not return their security deposit of \$275.00. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. I further find that the Landlord's right to make a claim against the deposit was extinguished under s. 24(2) and s. 36(2) of the Act because she did not complete a move in or a move out condition inspection report in accordance with the Regulations to the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$550.00 to the Tenants with accrued interest of \$8.74 (on the original amount).

Section 49 of the Act says that a tenant who receives a 2 Month Notice to End Tenancy is entitled to receive compensation equivalent to one month's rent payable under the tenancy agreement. Although the Tenants were served with a 2 Month Notice to End

Tenancy, they were successful in their application to cancel it and therefore I find that they were not entitled to receive their last month's rent free as compensation. Consequently, this part of the Tenants' application is dismissed without leave to reapply. I find that the Tenants are entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee they paid for this proceeding.

Conclusion

The Tenants' application to recover an overpayment of rent is dismissed without leave to reapply. The Tenants' application to recover double the security deposit and the filing fee for this proceeding is granted. A Monetary Order in the amount of **\$608.74** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount of the Order 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: March 05, 2012.

Residential Tenancy Branch