



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started on August 1, 2005 and ended on September 30, 2011 when the Tenant moved out. Rent was \$1,100.00 at the end of the tenancy. The Tenant paid a security deposit of \$535.00 at the beginning of the tenancy.

The Parties completed a condition inspection report at the beginning and at the end of the tenancy. The Landlords claim that as soon as they arrived for the move out inspection, the Tenant was irate because he did not want to participate in it so he left at the urging of his spouse and the male Landlord completed the report with the Tenant's spouse. The Tenant claims that the female Landlord was irate and that once she left the rental unit he and his spouse completed the move out inspection report with the male Landlord without further incident. The Tenant's spouse signed the move out inspection report on October 1, 2011, and the Tenant's forwarding address was recorded on it at that time.

On or about October 11, 2011, the Landlords returned \$328.76 of the security deposit to the Tenant and advised him in a letter of the same date that they had kept the balance of \$210.24 to compensate them for carpet cleaning, general cleaning and repair expenses. The Parties agree that the Tenant did not give the Landlords written authorization to keep part of his security deposit and the full amount has not been returned to him. The Landlords argued that they did not have an opportunity to complete the section on the move out condition inspection report regarding deductions from the security deposit because the Tenant was uncooperative.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or 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 a 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. RTB Policy Guideline #17 at p. 2 states that *"unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit."*

I find that the Landlords received the Tenant's forwarding address in writing on October 1, 2011 but returned only \$328.76 of the \$538.00 security deposit paid by the Tenant. I also find that the Landlords did not have the Tenant's written authorization to keep all or part of the security deposit. The Landlords argued that they were unable to complete the section of the move out condition inspection report dealing with deductions from the security deposit because the Tenant was uncooperative. However, I find that the Tenant's (or his spouse's) refusal to agree to deductions from the security deposit did not render the condition inspection report invalid. In those circumstances, the Landlords were required under s. 38(1) of the Act to make an application for dispute resolution to make a claim against the security deposit for carpet cleaning, general cleaning and repair expenses which they did not do. Consequently, I find that the Landlords are liable under s. 38(6) of the Act for double the security deposit.

Although the Tenant did not claim double the amount of the security deposit on his application, I find that he did not specifically waive reliance of s. 38(6) of the Act and therefore I find that he is entitled to recover the following amount:

Double the security deposit:	\$1,076.00
Accrued interest:	<u>\$18.93</u>
Subtotal:	\$1,094.93
Less: Amount Paid:	<u>(\$328.76)</u>
Balance owing:	\$766.17

I also find pursuant to s. 72(1) of the Act that the Tenant is entitled to recover the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$816.17** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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 19, 2012.

Residential Tenancy Branch