

DECISION

Dispute Codes:

MNSD; FF; O

Introduction

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

This matter was heard on February 14, 2012, and a Decision rendered the same day. The Tenants were provided with a Monetary Order in the amount of \$1,827.98 representing double the amount of the security deposit plus interest and recovery of the Tenants' application fee.

The Landlord filed an Application for Review of the above Order and on February 29, 2012, on the grounds that she had new and relevant evidence and that the Dispute Resolution Officer's Decision was obtained by fraud. The Reviewing Officer found that there was no new and relevant evidence provided by the Landlord, but that the Tenants omitted information during the Hearing which may have resulted in a different outcome. The Tenant's application was granted and orders were made that a new Hearing be scheduled; that the Landlord serve the Tenants with a copy of the Review Consideration Decision and Notice of Hearing within 3 days of receipt of the Decision; and that the Decision and Order of February 14, 2012 be suspended pending outcome of the new Hearing.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she did not serve the Tenants with the Notice of Hearing. She stated that she thought that the Residential Tenancy Branch would provide the Tenants with a copy of the Review Consideration Decision and the Notice of Hearing. I reminded the Landlord that the Review Consideration was very clear that the Landlord must serve the Tenant.

The Tenant testified that he found out about the Hearing when he called the branch to make enquiries on the file. The Tenant stated that he wanted to go ahead with the Hearing today because the Landlord had alleged fraud in her Application for Review and he wanted to clear his name.

Although the Tenants were not duly served, the Hearing proceeded at the request of the Tenant.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

This tenancy began on September 1, 2006 and ended on July 31, 2011. Monthly rent was \$1,750.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$875.00 on September 1, 2006. The Tenants provided their forwarding address in writing on July 31, 2011.

The Landlord and the Tenants both filed previous Applications for Dispute Resolution against the security deposit and those Hearings were scheduled to be heard together on October 20, 2011. The Tenants attended the hearing on October 20, 2011, but the Landlord did not. The Landlord's Application was dismissed without leave to reapply. The Tenants did not provide sufficient evidence that the Landlord was served with their Application and therefore their Application was dismissed with leave to reapply. The Hearing on February 14, 2012, was the Tenant's reapplication.

The Landlord testified that the parties had an agreement that she would keep the security deposit and therefore she did not attend the hearing on October 20, 2011.

The Tenant testified that the Tenants and the Landlord were attempting to negotiate an agreement with respect to the disposition of the security deposit, but no such agreement was finalized. He stated that the Tenants offered to settle the matter if the Landlord canceled her claim for nearly \$5,000.00. He stated that the Landlord's claim was for maintenance work that was the Landlord's responsibility, but that the Tenants tried to settle the matter to avoid further stress. He stated that the Tenants received no confirmation that the Landlord's application had been canceled, so he phoned the Residential Tenancy Branch on September 2, 2011, and was advised that the Landlord had not canceled the Hearing and was still sending in documentary evidence. The Tenant testified that he was advised to call in on October 20, or a Decision could be made in the Tenants' absence. He stated that he was advised that he could reapply, which he did on December 2, 2011.

The Tenant testified that he mailed the documentary evidence in support of his December 2 application to the Landlord, by registered mail, and that the Landlord signed for the documents on December 5, 2011. The Tenant provided a copy of the Canada Post tracking system printout in evidence.

Copies of the e-mails between the parties and from the Residential Tenancy Branch were also provided in evidence.

Analysis

The Landlord testified that the parties had an agreement that she would keep the security deposit and therefore she did not attend the hearing on October 20, 2011. Based on the documents provided in evidence, I am satisfied that the Landlord was duly served with notice of the February 14, 2012, Hearing. She did not provide a satisfactory explanation with respect to why she did not attend that Hearing. In any event, she was successful in her Application for a Review Consideration and the matter was ordered to be set down for a new Hearing.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Based on the testimony and documentary evidence before me, I find that there was no agreement to settle this matter before the October 20th Hearing date, because the Landlord failed to cancel the Hearing date upon which the Tenants' offer was contingent.

The Landlord's application against the security deposit was dismissed without leave to reapply on October 20, 2011. Therefore, I order the Landlord to return the security deposit, together with accrued interest in the amount of \$27.98, to the Tenants forthwith.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, the Landlord received the Tenants' forwarding address in writing on July 31, 2011, and the Landlord filed her application against the security deposit on the 15th day. Therefore, I find that the Tenants are not entitled to the doubling provision provided by Section 38(6) of the Act.

The Tenants have been partially successful in their application and I find that they are entitled to recover the cost of filing their February 14th application against the Landlord.

The Decision and Monetary Order of February 14, 2012, are hereby set aside. I hereby provide the Tenants with a Monetary Order in the amount of **\$952.98** (\$857.00 security deposit + \$27.98 interest + \$50.00 filing fee).

Conclusion

I hereby set aside the Decision and Monetary Order dated February 14, 2012.

I hereby grant the Tenants a Monetary Order in the amount of **\$952.98** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 02, 2012.

Residential Tenancy Branch