



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

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 originally heard on February 13, 2012. The dispute resolution officer granted the Tenant's application and provided a Monetary Order in the amount of \$1,450.00.

On April 2, 2012, the Landlord made an Application for Review Consideration on the grounds that she was unable to attend the February 13, 2012, Hearing through no fault of her own. Her Application was granted, and the Decision and Order of February 13, 2012 were suspended pending the outcome of this Hearing. The Landlord was ordered to serve the Tenants with: a copy of the Review Decision; Notice of Hearing; Application for Review Consideration; and copies of all the evidence she submitted with the Application for Review Consideration. The Landlord was ordered to serve the Tenants with these things within three days of receiving the Review Decision and Notice of Hearing documents.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that the Landlord did not serve him or the other Tenant with any documents and that he found out about the Hearing by calling the Residential Tenancy Branch to make enquiries about the Decision and Order made February 13, 2012. The Tenant testified that he was unable to provide documentary evidence for the new Hearing because he only recently found out about the new Hearing and did not have sufficient time to do so.

The Landlord agreed that she did not serve either of the Tenants. She stated that she did not know she had to serve them and thought the Residential Tenancy Branch would do so.

Issues to be Decided

- are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on July 15, 2011 and ended on December 15, 2011. Monthly rent was \$700.00, due on the 5th day of each month. The Tenants paid a security deposit in the amount of \$700.00 at the beginning of the tenancy.

The Tenant testified that the Tenants provided their forwarding address in writing on December 14, 2011. He stated that he also sent an e-mail to the Landlord on January 1, 2012, confirming that the Tenants were comfortable with the Landlord performing the move-out condition inspection on her own, but asking the Landlord to advise them if she wanted them to be there. The Tenant testified that the Landlord did not reply to that e-mail. He stated that the Landlord assured the Tenants on January 6 and on January 24 that the security deposit would be returned to them soon. The Tenant testified that the Landlord did not return any of the security deposit to the Tenants.

The Landlord stated that she intended to return the security deposit, but agreed that she did not return it within 15 days of the end of the tenancy, nor did she file an application against the security deposit. The Landlord testified that she has not returned any of the security deposit to the Tenants.

Analysis

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

Section 38(1) of the Act provides that (unless a landlord has the tenant's 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 (whichever date shall last occur), 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.

I accept the Tenant's undisputed testimony that he provided the Landlord with a forwarding address in writing on December 14, 2012. The Landlord did not return the security deposit within 15 days of the end of the tenancy (by December 30, 2011), nor did the Landlord file for dispute resolution 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. Therefore, I find that the Tenants are entitled to a monetary order for double the security deposit, in the amount of \$1,400.00.

I hereby confirm the Decision and Order dated February 13, 2012.

Conclusion

The Decision and Monetary Order in the amount of **\$1,450.00**, dated February 13, 2012, is hereby confirmed. The Tenants may enforce the Monetary Order in the Provincial Court of British Columbia (Small Claims Court) 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: May 07, 2012.

Residential Tenancy Branch