



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to obtain an Order to have the Landlords comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order?
2. Have the Tenants' proven entitlement to an Order to have the Landlord comply with the Act, regulation, or tenancy agreement?

Background and Evidence

Upon review of the Tenants' application the Tenant confirmed he wished to withdraw his request for an Order to have the Landlord comply with the Act, regulation, or tenancy agreement.

The parties agreed they entered into a month to month tenancy agreement that began on April 1, 2011. Rent was payable on the first of each month in the amount of \$1,350.00 and on or before April 1, 2011 the Tenants paid \$675.00 as the security deposit.

The Landlord affirmed that on February 27, 2012, the Tenants provided her written notice to end their tenancy effective March 31, 2012 and they paid the full month's rent

for March 2012. She confirmed receiving the Tenants' forwarding address on March 30, 2012.

The Landlord advised that she does not have the Tenants' written permission to keep their security deposit however she was under the impression she could keep the deposit based on the comment written on the bottom of the condition inspection report which states "when cleaning & cabinets fixed or replaced charges will be forwarded". She also confirmed that she has not made application for dispute resolution to keep the deposit and she does not have an Order issued by the *Residential Tenancy Branch* authorizing her to keep the deposit.

The Tenant confirmed the terms of the tenancy agreement and submitted nothing further pertaining to their claim.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7 of the *Act*.

In this case the Landlord confirmed she did not apply for dispute resolution to keep the security deposit, she does not have an Order allowing her to keep the deposit, and she does not have the Tenants' written consent to keep the security deposit.

The evidence supports the tenancy ended and on March 30, 2012 the Tenants provided the Landlord with their forwarding address.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than April 14, 2012. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenants have succeeded in meeting the burden of proof and I approve their claim for the return of double their security deposit plus interest in the amount of **\$1,350.00** (2 x \$675.00 + \$0.00)

The Tenants have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenants withdrew their request for an Order to have the Landlord comply with the Act, regulation or tenancy agreement.

The Tenants have been awarded a Monetary Order in the amount of **\$1,400.00** (\$1,350.00 + 50.00). This Order is legally binding and must be served upon the Landlord.

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: June 29, 2012.

Residential Tenancy Branch