



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlords said they served the Tenants on June 2, 2012 by registered mail with the Application and Notice of Hearing (the "hearing package"). According to the Canada Post online tracking system, the Tenants received this mail on June 6, 2012. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This month-to-month tenancy started on August 1, 2010 and ended on May 1, 2012 when the Tenants moved out. Rent was \$1,300.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$650.00 at the beginning of the tenancy. The Landlords said the Tenants have rent arrears of \$300.00 for March 2012 and did not pay rent for April 2012. The Landlords said the Tenants advised them that they should keep the security deposit in partial payment of the rent arrears.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears of \$1,600.00. I also find that the Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee they paid for this proceeding.

Section 21 of the Act says “unless the landlord gives *written consent*, a tenant must not apply a security deposit or pet damage deposit as rent.” One reason that consent must be in writing is because a Landlord may be responsible for returning double the amount of a security deposit under s. 38 of the Act if they do not get a Tenant’s written authorization to keep the deposit. Consequently, I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants’ security deposit of \$650.00 in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of \$1,000.00.

Conclusion

A Monetary Order in the amount of \$1,000.00 has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: July 31, 2012.

Residential Tenancy Branch