



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, FF / MNDC, MNSD, FF

Introduction

This hearing concerns two applications: i) by the landlords for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on September 1, 2010. Monthly rent of \$950.00 was payable in advance on the first day of each month, and a security deposit in the amount of one full month's rent of \$950.00 was collected. A move-in condition inspection report was not completed.

The tenancy ended March 31, 2012. A move-out condition inspection report was not completed. By letter to the landlords dated April 20, 2012, the tenants requested the return of their security deposit and provided their forwarding address. To date, however, the security deposit has not been returned.

The landlords seek compensation for repair / replacement of damaged floor tiles, lost wages and time expended in general in regard to the dispute. During the hearing the landlord testified that no repair / replacement of tiles has yet been undertaken. In the result, there are no related receipts in evidence.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Pursuant to section 63 of the Act which speaks to the **Opportunity to settle dispute**, during the hearing the parties exchanged views around possible settlement of the dispute. However, these discussions did not lead to a mutually agreeable resolution.

Based on the documentary evidence and testimony, the various aspects of the two claims and my findings around each are set out below.

TENANTS

\$1,900.00*: *double return of security deposit (2 x \$950.00).*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section of the Act provides that within 15 days of the later of the date the tenancy ends, and the date the landlords receive the tenants' forwarding address in writing, the landlords must either repay the security deposit or file an application for dispute resolution. If the landlords do neither, section 38(6) of the Act provides that the landlords may not make a claim against the security deposit and must pay the tenants double the amount of the security deposit.

I find that as the landlords neither returned the security deposit, nor filed an application to retain it within 15 days after being informed by the tenants in writing of their forwarding address (after the end of tenancy), the tenants have established entitlement to the double return of their security deposit in the total amount of **\$1,900.00**.

\$50.00*: *filing fee*. As the tenants have succeeded in the main aspect of their application, I find that they have established entitlement to recovery of the full filing fee.

Total entitlement: \$1,950.00.

LANDLORDS

\$4,500: *repair / replace damaged tiles, lost wages, general time invested*.

The following sections of the Act are particularly relevant to this dispute and the landlords' claim in particular:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

In summary, both sections 24 and 36 of the Act provide that the right of a landlord to claim against the security deposit is extinguished if two opportunities to complete the respective inspections are not offered, and no condition inspection report is completed and / or given to the tenants.

Further, and despite the above, the landlords' application does not even include an application to retain the security deposit, and as the landlords have not incurred any repair / replacement costs, there are no related receipts in evidence. Following from all of the foregoing, this aspect of the landlords' application is hereby dismissed.

\$50.00: filing fee. As the landlords have not succeeded in the main aspect of their application, their application to recover the filing fee is hereby dismissed.

Total entitlement: **Nil.**

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,950.00**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court 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 19, 2012.

Residential Tenancy Branch