



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on the tenant's application of June 22, 2012 seeking return of his security deposit on the grounds that the landlord did not return it or make application to claim on it within the latter of 15 days from the end of the tenancy or receipt of the tenant's forwarding address.

As a matter of note, the style of cause on this application named the individual property manager as respondent, while the rental agreement named a corporation acting on behalf of the owner. With consent of the parties and as authorized under section 64(3)(c) of the *Act*, I have amended the application to add the name of the corporate property manager in whose name rent cheques were payable. I have not named "the owner" who is not named on the rental agreement or the application.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to a Monetary Order for return of the security deposit - retained without consent or an order obtained through dispute resolution - and whether the amount must be doubled.

Background and Evidence

This tenancy ran from June 1, 2011 to May 31, 2012 under a fixed term rental agreement. Rent was \$1,550 per month and the landlord holds a security deposit of \$775 paid at the beginning of the tenancy.

During the hearing, all parties concurred that the security deposit has not yet been returned to the tenants. The female tenant stated that, on the last day of the tenancy, she had left the forwarding address in writing along with the keys to the rental unit on a counter in the rental unit. The property manager stated that he had not received the forwarding address.

The female tenant stated that she spoke with the property manager's office a couple of days later and was assured that the security deposit would be returned shortly, and the employee with whom she spoke made no mention of not having a forwarding address.

The tenant stated that she sent the forwarding address to the property manager a second time on June 11, 2012 after they had some discussion regarding a key fob. The property manager did not recall having received the email.

The male tenant gave evidence that he had spoken with the property manager by telephone two weeks before the hearing at which time the property manager stated he would return the deposit if the tenant would withdraw his application, which I note also contained the forwarding address.

The property manager stated that he felt the rental unit was left in sufficiently good order that the deposit should be returned, but that the owner had some concern over residual pet odour. He said the owner had agreed to release of the deposit before his telephone conversation in August with the tenant who elected to proceed with the hearing because of the two and one-half month delay.

On the question of provision of the forwarding address, I prefer the evidence of the tenants and accept that it was provided to the landlord on the last day of the tenancy, at which time the landlord should have scheduled a move-out condition inspection but did not do so. In addition, I accept the evidence of the female tenant that she forwarded the address a second time by email on June 11, 2012.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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 deposits.

In the present matter, I accept the evidence of the tenant that the deposit was not returned and I have no evidence that the landlord made application to claim against it within 15 days of the end of the tenancy.

Therefore, I find that the tenant is entitled to a Monetary Order for the security deposit and that the amount must be doubled in compliance with section 38(6) of the *Act*. As the application has succeeded on its merits, I find that the tenant is entitled to recover the filing fee for this proceeding from the landlord. The monetary award is calculated as follows:

| | |
|----------------------------|-------------------|
| To return security deposit | \$775.00 |
| Filing fee | <u>50.00</u> |
| TOTAL | \$1,600.00 |

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$635.80**, enforceable through the Provincial Court of British Columbia, for service on 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: August 31, 2012.

Residential Tenancy Branch