



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit, doubled, for a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to **relevant** documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the landlord confirmed receipt of the tenants' evidence; however both tenants, appearing on separate telephone lines, each denied receiving the landlord's evidence.

When questioned, the landlord stated that each tenant was served with their 7 page evidence package via regular mail. The landlord was uncertain of the date, but stated it was the same time the evidence package was mailed to the Residential Tenancy Branch ("RTB"). I note the RTB showed receipt of the landlord's evidence on July 24, 2012.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order comprised of their security deposit, doubled, and to recover the filing fee?

Background and Evidence

This 13 month, fixed term tenancy began on September 1, 2011, was set to expire on September 30, 2012, actually ended on May 30, 2011, when the tenants vacated the rental unit, monthly rent was \$1695.00 and the tenants paid a security deposit of \$850.00 on or about August 25, 2011.

The tenants' monetary claim is in the amount of \$1750.00, comprised of their security deposit of \$850.00, doubled, and for recovery of the filing fee of \$50.00.

The tenants gave undisputed evidence that the landlord was provided their written forwarding address on the condition inspection report on May 30, 2012, that they did not agree to allow the landlord to make any deductions from their security deposit and that to date, the landlord has not returned any portion of their security deposit.

Landlord's response-

The landlord agreed that the tenants' written forwarding address was provided on the condition inspection report on May 30, 2012, and that he has not returned the tenants any portion of their security deposit.

Thereafter the landlord presented that he wanted to proceed with his claim, with reference to his evidence submitted, entitled "Attachment to **Landlord's** Application for Dispute Resolution."

The landlord confirmed that he had not made his own application for dispute resolution with the RTB, but rather his claim was as a respondent, responding to a claim, and that his evidence was to be considered his application for damages and cleaning, pet damage deposit and unpaid rent. As such the landlord confirmed he has not returned the tenants' security deposit or any portion thereof.

Upon attempting to explain to the landlord that I would not consider his evidence to be a claim, that I did not consider his evidence relevant to the hearing and that I would consider only the application for dispute resolution before me, that being the tenants' application, the landlord began a verbal outburst.

Among many other things, the landlord questioned the integrity of the dispute resolution process and the Dispute Resolution Officer, claiming a bias against him and calling the dispute resolution proceeding a "kangaroo court."

The landlord also said that I would not be able to make a “valid decision.” I note that despite this, in the midst of the landlord’s outburst, he did testify as to his “claim.”

The landlord began calling the tenants liars, at which time I informed the landlord I could not condone his language and ended the telephone conference call hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant’s security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant’s forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence show that the landlord received the tenants’ written forwarding address on May 30, 2012, the last day of the tenancy, the tenants have not agreed to any deductions from their security deposit, the landlord has not applied for arbitration claiming against the security deposit and has not returned any portion of the tenants’ security deposit.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or with the written agreement of the tenants. Here the landlord did not have any such authority to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit, and under section 38 I must order the landlord to pay the tenants double their security deposit.

Conclusion

I find the tenants have established a monetary claim in the amount of \$1750.00, comprised of their security deposit of \$850.00, doubled, and for recovery of the filing fee of \$50.00.

I therefore grant the tenants a final, legally binding monetary order in the amount of \$1750.00, which I have enclosed with the tenants’ Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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: August 22, 2012.

Residential Tenancy Branch