



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF

Introduction

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

This matter was originally heard on June 19, 2012, however the Dispute Resolution Officer at that Hearing fell ill and was not able to provide her Decision . Therefore, with the parties' consent, the matter was rescheduled to July 24, 2012. This is a new Hearing.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent acknowledged receiving the Tenants' Application for Dispute Resolution and Notice of Hearing documents on April 23, 2012.

The Landlord's agent testified that he believes the Landlord's documentary evidence was couriered to the Tenants on June 12, 2012. The Tenants stated that they received the Landlord's documentary evidence "about a month ago".

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Landlord's agent stated that he is not sure if there was a written tenancy agreement between the parties, because the previous manager has died and there is no copy on the file.

This tenancy began on October 1, 2007. The Landlord stated that the tenancy ended on April 23, 2012. The Tenants testified that the tenancy ended on March 31, 2012.

The Tenants paid a security deposit in the amount of \$340.00 on October 1, 2007. None of the security deposit has been returned to the Tenants. The Tenants did not agree that the Landlord could retain any of the security deposit.

The Landlord's agent stated that he didn't have to return any of the security deposit because the Tenants didn't give him their forwarding address in writing. The Landlord's agent stated that he did not know the Tenants' forwarding address until he was served with the Application for Dispute Resolution on April 23, 2012. He stated that the Landlord had a claim against the Tenants for damages, but did not have an explanation for why the Landlord did not file that Application shortly after it received the Tenants' forwarding address on April 23, 2012.

The Tenants testified that they gave the Landlord their forwarding address "a month before we moved".

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing (whichever shall last occur), a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I find that the Landlord received the Tenants' forwarding address in writing when he was served with the Tenants' Application for Dispute Resolution. The Landlord did not return the security deposit or file for dispute resolution against the security deposit within 15 days of receipt of the Tenant's forwarding address.

Section 38(6) of the Act provides 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 security deposit. Therefore, I find that the Tenants are entitled to a monetary order for double the security deposit, in the amount of **\$680.00**, plus accrued interest on the original deposit in the amount of **\$6.41**.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlord remains at liberty to file its application pursuant to the provisions of Section 67 of the Act, should it so desire.

Conclusion

I hereby provide the Tenants a Monetary Order in the amount of **\$736.41** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: August 07, 2012.

Residential Tenancy Branch