



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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 and pet damage deposit 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 submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence. 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 and pet damage deposit and to recover the filing fee?

Background and Evidence

I heard the following undisputed testimony: This one year, fixed term tenancy began on August 1, 2011, ended on July 31, 2011, and the tenants paid a security deposit of \$380.00 and a pet damage deposit of \$200.00 on July 20, 2011.

The tenants' monetary claim is in the amount of \$580.00, comprised of their security deposit of \$380.00 and their pet damage deposit of \$200.00. The tenants also seek recovery of the filing fee of \$50.00.

The tenant gave undisputed evidence that the landlord was provided their written forwarding address in a letter dated January 9, 2012, that they did not agree to allow the landlord to make any deductions from their security deposit or pet damage deposit and that to date, the landlord has not returned any portion of their security deposit or pet damage deposit.

Landlord's response-

The landlord agreed that she received the tenants' written forwarding address within a week of January 9, 2012, and that she has not returned the tenants any portion of their security deposit.

Analysis

Based on the oral and written evidence submitted 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 and pet damage deposit or to file an application for dispute resolution to retain the security deposit and pet damage 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 and pet damage deposit.

In the case before me, the undisputed evidence show that the tenancy ended on July 31, 2011, the landlord received the tenants' written forwarding address no later than January 16, 2012, the tenants have not agreed to any deductions from their security deposit or pet damage deposit, the landlord has not applied for arbitration claiming against the deposits and has not returned any portion of the tenants' security deposit and pet damage 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 there is no evidence that the landlord had any such authority to keep any portion of the security deposit or pet damage deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit and pet damage deposit, and under section 38 I must order the landlord to pay the tenants double their security deposit and pet damage deposit.

Conclusion

I find the tenants have established a monetary claim in the amount of \$1210.00, comprised of their security deposit of \$380.00, doubled to \$760.00, their pet damage deposit of \$200.00, doubled to \$400.00, 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 \$1210.00, 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: September 18, 2012.

Residential Tenancy Branch