



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenants' application for a monetary order for double the security deposit; for compensation under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he sent the Notice of Hearing documents and copies of his documentary evidence to each of the Landlords, by registered mail, on September 11, 2012. The Tenants provided copies of the registered mail receipts and tracking numbers in evidence. He stated that he sent the documents to the address identified as the Landlords' address on the tenancy agreement, which is also the address the Landlords gave on a Condition Inspection Report that the Landlord e-mailed to the Tenants on September 4, 2012.

The Tenant testified that the Notice of Hearing documents were returned to him on September 28, 2012, marked "recipient is not located at the address provided". He stated that the male Landlord sent him an e-mail stating, "the mail was returned as [the female Landlord] is out of the country and unable to sign for it". A copy of the e-mail, dated September 18, 2012, was provided in evidence. The Tenant stated that he also sent copies of the documents to the Landlord, via e-mail.

Based on the Tenant's testimony and documentary evidence, I am satisfied that he served both Landlords with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(c) of the Act. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the documents. Despite being duly served with the documents, the Landlords did not sign into the teleconference and the Hearing continued in their absence.

Preliminary Matter

In his documentary evidence, the Tenant indicated that he is also seeking, "Ruling to the effect that all matters and issues as relate to the tenancy are concluded as of 14th

August". At the Hearing, he clarified that that he is seeking a determination that any monetary award provided at the Hearing be considered full and final settlement of all claims surrounding this tenancy, including any claims that the Landlords may have against the Tenants. The Tenant submitted that the Landlord was given notice of today's Hearing and also of the Tenants' intention to ask for this determination. He submitted that if the Landlords felt they had a claim for damages, they should have filed their own Application so that all matters surrounding the tenancy could be concluded today.

This portion of the Tenants' application was not clear. If I made a ruling that all matters and issues as relate to the tenancy were concluded **as of August 14, 2012**, then the Tenants' own application would be dismissed. In any event, I explained to the Tenant that even though the security deposit may become extinguished under Section 38 of the Act, the Landlords retain the right to file an application for damages under the provisions of Section 67 of the Act. Therefore, I decline to make any such determination and this portion of the Tenants' application is dismissed.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit?
- Are the Tenants entitled to compensation for their administrative costs and time spent in order to prepare for the Hearing?

Background and Evidence

The Tenant stated that the tenancy ended on August 14, 2012. The Tenants paid a security deposit and a pet damage deposit, each in the amount of \$1,125.00 on January 12, 2011. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning of the tenancy.

The Tenant testified that he gave the Landlords written notification of his forwarding address at 3:00 p.m. on August 14, 2012, at the move-out Condition Inspection. He stated that the Landlords sent his copy of the Condition Inspection Report to the rental unit instead of sending it to him at his new address, so he had to ask the Landlords to send it to him again. He stated that the Landlord sent a copy by e-mail on September 4, 2012. The Tenant stated that the copy that the Landlords sent him was different from the copy that he had seen at the move-out inspection.

The Tenant stated that he has received the security deposit and pet damage deposit back, but not until after the allowed 15 days had passed. Therefore the Tenants still seek compensation pursuant to the provisions of Section 38(6) of the Act.

The Tenant submitted that he has spent hours attempting to get the security and pet damage deposit returned. He seeks compensation for his time and administrative costs in the amount of \$450.00.

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenants' application in this Decision.

A security deposit and pet damage deposit are held in a form of trust by a landlord for a 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 written 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, a landlord has 15 days to either:

1. repay the security deposit in full; or
2. make an application for dispute resolution claiming against the security deposit.

I accept the Tenant's undisputed testimony that:

- the Tenants moved out of the rental unit on August 14, 2012;
- the Tenants provided a forwarding address in writing to the Landlords on August 14, 2012.
- the Landlords did not return the security deposit within 15 days of receipt of the Tenants' forwarding address.

The Landlords have not filed for dispute resolution against the security deposit.

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 compensation in the equivalent of double the security and pet damage deposit, in the total amount of \$4,500.00.

I accept the Tenants' testimony that the Landlords have returned the Tenants' deposits, albeit late, and therefore I deduct that amount from the Tenants' monetary award.

There is no provision in the Act, regulation or tenancy agreement with respect to compensation for a party's time and efforts in filing and pursuing an application and this portion of the Tenants' application is dismissed.

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

I hereby provide the Tenants a Monetary Order, calculated as follows:

| | |
|---|--------------------|
| Compensation pursuant to Section 38(6) of the Act | \$4,500.00 |
| Recovery of filing fee | <u>\$50.00</u> |
| Subtotal | \$4,550.00 |
| Less amount paid by Landlords | <u>-\$2,250.00</u> |
| TOTAL | \$2,300.00 |

Conclusion

The Tenant's copy of this Decision is accompanied by a Monetary Order in the amount of **\$2,300.00** for service upon the Landlords. 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: October 29, 2012.

Residential Tenancy Branch