



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents, by registered mail, to the Landlord on September 21, 2012. The Landlord acknowledged receipt of the documents.

Issues to be Decided

- Are the Tenants entitled to a monetary award in the equivalent of double the amount of the security deposit?

Background and Evidence

This tenancy began on April 15, 2006 and ended on August 1, 2012. The Tenants paid a security deposit in the amount of \$540.00 on April 15, 2006. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy.

The Tenant testified that he gave the Landlord written notification of his forwarding address by regular mail sent on August 21, 2012. The Landlord testified that he received the Tenant's forwarding address by mail, but does not recall the date.

The Tenant did not agree that the Landlord could retain any of the security deposit.

The Landlord stated that he did not return any of the security deposit to the Tenants because the rental unit was dirty and damaged, so the Landlord applied the security deposit towards unpaid utility bills, cleaning, painting and repairs. The Landlord has not filed an application for dispute resolution with respect to the security deposit, unpaid utility bills, or the damages.

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 Tenant's application in this Decision.

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

Section 90 of the Act deems service by mail to be effective 5 days after mailing the document. Based on the affirmed testimony of both parties, I find that the Landlord received the Tenants' forwarding address on August 26, 2012. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file 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 a monetary award in the equivalent of double the security deposit, in the amount of **\$1,080.00**, plus accrued interest on the original deposit in the amount of **\$18.12**.

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 provided testimony and documentary evidence which suggests that he believes he is entitled to an award for damages. I explained to both parties that although the security deposit is now extinguished, the Landlord retains the right to file his own application for damages under Section 67 of the Act.

Conclusion

I hereby provide the Tenants a Monetary Order in the amount of **\$1,148.12** 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: November 13, 2012.

Residential Tenancy Branch