



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on the tenant's application of October 9, 2012 seeking a monetary award for return of double their security and pet damage deposits on the grounds that the landlord had not returned them within 15 days of the latter of the end of the tenancy or receipt of the tenants' forwarding address. The tenants also sought to recover the filing fee for this proceeding from the landlord.

With permission of the tenants, I have removed the name of the building manager as a respondent as he is not personally liable under the claim. The corporate landlord remains as sole respondent.

By letter to the branch received on October 18, 2012, the tenants advised that they had received a cheque which almost covered the deposits two days earlier but that they would be proceeding with the claim for double.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order to double the deposits less the payment received on October 16, 2012?

Background and Evidence

This tenancy began on January 1, 2011 and ended on September 1, 2012 on notice from the tenants. Rent was \$756 per month and the landlord held security and pet damage deposits of \$362.50 and \$325 paid on January 1, 2011 and January 14, 2012 respectively and totalling \$687.50.

During the hearing, the tenants gave evidence with which the building manager concurred that no damage issues had been identified during completion of the move out condition inspection report and the manager had told the tenants return of the deposit was forthcoming. The building manager acknowledged receipt of the tenants' forwarding address at that time.

The female tenant gave evidence that on or about September 23, 2012, when the 15-day time limit had expired, she advised the manager that if the deposit was not returned by October 5, 2012, the tenants would file for return of them in double. When payment was not received, the tenants made the present application on October 9, 2012 and subsequently received the cheque for \$662.50 on October 16, 2012.

The cheque was dated September 15, 2012 which would have been on time but the envelope was post marked October 14, 2012.

The building manager stated that he believed the corporate office had issued a cheque earlier that had not been received, and they were awaiting confirmation that it had not been cashed before mailing the replacement.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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 deposits.

In the present matter, in the absence of documentary proof of a cheque sent earlier than October 14, 2012, I must find that the landlord breached section 38(1) of the *Act* and must return the deposits in double.

As the tenants did not submit proof of having provided the forwarding address in writing and relied on the manager's verification, I decline to award the filing fee.

Therefore, I find that the landlord owes to the tenants an amount calculated as follows:

Security deposit (no interest due)	\$362.50	
Sub total	\$687.50	\$ 687.50
To double deposits due as per section 38(6)		<u>687.50</u>
Total credit due to tenants		\$1,375.00
Less payment made by landlord		<u>- 662.50</u>
TOTAL REMAINDER OWED TO TENANTS		\$ 712.50

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$712.50**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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