



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 an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenants be awarded a Monetary Order?

Background and Evidence

The Tenants advised that they did not receive a copy of the Landlord's evidence. The Landlord confirmed she did not send the evidence until December 3, 2012 and that it was sent via Canada Post.

The parties agreed they entered into a written fixed term tenancy agreement that began on July 15, 2012 and was set to switch to a month to month tenancy after July 15, 2013. Rent was payable on the fifteen of each month in the amount of \$1,050.00 and on June 6, 2012 the Tenants paid \$525.00 as the security deposit. The Tenants did not pay the \$100.00 pet deposit. The Tenants ended the tenancy early and vacated by August 15, 2012. They attended a move in inspection at the outset of the tenancy and the move out inspection on August 15, 2012. The Tenants provided the Landlords with their forwarding address on August 15, 2012.

The Tenants submitted documentary evidence which included, among other things, copies of: the move out inspection report; a receipt of final payment for wardrobe allowance and utilities; and the tenancy agreement. They are seeking the return of double their security deposit less \$50.00 for carpet cleaning.

The Landlord confirmed that they have not returned the security deposit, they do not have the Tenants' written permission to keep the deposit, they do not have an Order authorizing them to keep the deposit, and they have not made an application for dispute resolution to request to keep the deposit.

The Landlord advised that she was of the opinion that because the Tenants breached the Act when ending their tenancy early she considered that they abandoned the unit and therefore she could keep the security deposit, without further action. She later confirmed the Tenants advised them that were ending the tenancy early. She advertised the unit and was able to find a new tenant effective September 1, 2012, two weeks after the Tenants vacated the property.

Analysis

The Landlord did not provide copies of their evidence in accordance with section 4.5 (a) of the *Residential Tenancy Branch Rules of Procedure* which provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the applicants as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlords have not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* and the Tenants have not received it prior to this hearing, I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Landlords' evidence will not be considered in my decision. I did however consider the Landlord's testimony.

Notwithstanding the Landlord's argument that the Tenant's abandoned the tenancy, the evidence supports that the Tenants informed the Landlords that they would be vacating the property August 15, 2012, which is the date they attended the move out inspection and returned possession to the Landlord. Accordingly, I find that this tenancy ended on August 15, 2012 and the Tenants provided the Landlords with their forwarding address at the move out inspection on August 15, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than August 30, 2012. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

The Tenants accept responsibility for carpet cleaning at a cost of \$50.00 and agreed to have this amount deducted from their security deposit. Based on the foregoing, I find that the Tenants have succeeded in proving their claim and I award them return of double their deposit less \$50.00 for carpet cleaning in the amount of **\$1,000.00** (2 x \$525.00 + \$0.00 interest - \$50.00 carpet cleaning).

The Tenants have succeeded with her application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$1,050.00** (\$1,000.00 + \$50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: December 11, 2012.

Residential Tenancy Branch