



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 amount of the security and pet damage deposits 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 Tenants testified that they sent the Landlord copies of their documentary evidence and the Notice of Hearing documents by registered mail shortly after they filed their Application. The Tenants stated that they did not have the receipt or tracking numbers for the documents. The Landlord acknowledged receiving the Notice of Hearing documents by registered mail, but stated that he did not receive copies of the Tenants' documentary evidence. Therefore, as the Tenants did not provide sufficient details with respect to service of their documentary evidence, I advised them that I would consider their affirmed testimony with respect to the documentary evidence provided by the Tenants.

The Tenants acknowledged receiving copies of the Landlord's documentary evidence by regular mail.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence. The tenancy agreement states that the tenancy began on October 1, 2011, and was a lease for a term of one year, ending October 1, 2012. Monthly rent was \$1,200.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$500.00 and a pet damage deposit in the amount of \$250.00 on September 15, 2010. The Tenants moved out of the rental unit on July 31, 2012.

The Tenants stated that the Landlord had returned all of the security and pet damage deposit at the end of the tenancy, by cheque. A week later, the Landlord put a stop payment on the cheque which caused their bank to charge them \$42.50. The Tenants also seek to recover that cost from the Landlords.

The female Tenant testified that she gave the Landlord written notification of their forwarding address by text message some time during the first week of August, 2012, but she could not recall the exact date.

The Tenants stated that they did not agree that the Landlord could retain any of the deposits.

The Landlord testified that he put a stop payment on the cheque because the Tenants' dog caused damage to the carpet, which was not obvious to the Landlords at the end of the tenancy. He stated that he also lost half a month's income because the Tenants did not provide due notice that they were ending the tenancy, and that the Tenants broke the lease by moving out early. In addition, the Landlord stated that the Tenants still owed \$104.00 in NSF fees to the Landlords. The Landlord stated that he hoped that these issues could be resolved at the Hearing.

Analysis

This matter was convened to hear the Tenants' Application. I explained to the parties that I could not decide any potential claims the Landlords might have because they had not filed their own application and served it upon the Tenants. The parties were advised that the Landlord may still file an application for damages under Section 67 of the Act even though disposition of the security and pet damage deposits would be decided today.

A security deposit is held in a form of trust by the Landlord for the Tenants, 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 or pet damage deposits) 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 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.

The female Tenant was not certain of the date that she sent the text advising of their forwarding address. In this case, I find that the Tenants have provided insufficient evidence of when they provided the Landlord with written notification of their forwarding address. In addition, Section 88 of the Act provides methods for service of documents and e-mails or texts are not included as methods for providing documents.

Therefore, I find that the Tenants are not entitled to compensation as outlined in Section 38(6) of the Act. However, I find that the Tenants are entitled to return of the deposits, in the total amount of **\$750.00**. No interest has accrued on the deposits.

The Tenants seek to recover NSF bank fees from the Landlord, but they did not include an application for damage or loss (MNDC) on their Application for Dispute Resolution and did not provide details of this claim in the "Details of Dispute" section of their Application. The Tenants did not provide documentary evidence with respect to any bank charges. Therefore, I dismiss this portion of their application without leave to reapply.

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 Landlord.

Conclusion

I hereby provide the Tenants a Monetary Order in the amount of **\$800.00** 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: December 05, 2012.

Residential Tenancy Branch