



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 filed on October 23, 2012, by the Tenants to obtain a Monetary Order for the return of double their security deposits and to recover the cost of their filing fee from the Landlord.

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 and respond to each other's testimony. 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 issued a Monetary Order?

Background and Evidence

At the outset of the hearing the Tenant confirmed receipt of the Landlord's evidence; however, the Landlord denied receipt of the Tenant's evidence. The Landlord indicated that she went into their office and picked up the hearing documents but did not see any evidence. The Tenant affirmed that she sent two packages of evidence during the second week of January 2013. One package was mailed to the owner's residence and the second package was mailed to the Owner's and Landlord's office. Neither package was returned to the Tenant.

I confirmed the addresses where the Tenant sent her evidence and I asked the Landlord if the owner resided in the main floor of the rental unit address. The Landlord provided a very vague answer and then stated that the owner lives there on occasion. I

reminded the Landlord she had taken an oath after which she confirmed the owner resided in the upper level of the rental property. While reviewing the Tenant's evidence I mentioned a photo copied cheque that had some writing on the side of the page. The Landlord denied receiving this however she spoke about received the photo copy of the cheque without writing. The Tenant denied sending that copy with her application and said it was sent with the evidence.

The Tenant submitted documentary evidence which included, among other things, copies of: an enveloped received from the Landlord and post marked September 24, 2012; the cheque for \$860.00 which was received from the Landlord on September 25, 2012; e-mails and text messages sent between the parties; and the move in / move out condition inspection report.

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; move in / move out condition inspection report; pictures of damaged flooring; estimates for cost of repair; cheques received in 2011 and 2012 as deposits; and partial refund of deposits dated September 12, 2012.

Both parties agreed to the following facts which were discussed during this proceeding:

- The parties entered into a written fixed term tenancy agreement that began on August 1, 2011 and initially was set to end on July 31, 2012; and
- Rent was payable on the first of each month in the amount of \$1,300.00 plus \$50.00 per month for utilities; and
- The Tenants were required to provide post dated rent cheques for the entire length of the tenancy; and
- On July 5, 2011 the Tenants paid \$650.00 as the security deposit; and
- On August 2, 2011 the parties attended the move in inspection, completed and signed the condition inspection form; and
- In April or early May 2012 the Landlord, J.T., entered into an agreement with Tenant, J.K., to allow the Tenants to sublease the rental property;
- The sub-tenants took possession of the rental unit on approximately May 4, 2012; and
- The Landlord met with the Tenants on May 6, 2012 and was paid \$600.00 as additional security deposit funds; and
- The sub-tenants needed possession of the rental unit until August 31, 2012, so the tenancy agreement end date was ended and on May 6, 2012 the Landlord was given another post dated cheque from the Tenants dated for August 2012 rent; and

- The Tenants continued to pay the rent to the Landlord while the sub-tenants paid rent to the original Tenants.
- The Tenant received a text message from the Landlord in mid August 2012 to advise that the sub-tenants had vacated the unit early.
- The Tenants attended the move out inspection with the Landlord on August 31, 2012 and signed the condition inspection report form and provided the Landlord with their forwarding address.

The Tenant acknowledged receipt of a partial refund of their security deposit in the amount of \$860.00. She noted that this refund cheque was mailed or post marked until September 24, 2012 and she received the envelope on September 25, 2012. She agreed that there was damage to the floor noted on the move out inspection but argued that they did not give the Landlord permission to withhold money from their deposit for this damage.

The Tenant stated that she was not provided a copy of the move out inspection report form so on September 28, 2012 she sent the Landlord a text message to request a copy. She received the copy during the first week of October 2012.

The Landlord stated that the refund cheque would have been mailed by their accountant so she could not provide testimony as to when it was mailed. She also stated that she did not get the Tenant's evidence so she did not see the envelope with the post mark.

The Landlord argued that the Tenants verbally agreed to allow her to withhold the cost of the floor repair from their security deposit. She confirmed that she did not have their permission in writing, she did not possess an Order from the *Residential Tenancy Branch*, and they have not made an application for dispute resolution to keep the deposit money.

The Tenant denied entering into a verbal agreement to allow the Landlord to retain their deposits. She stated that the Landlord had agreed to get quotes and send them copies to discuss.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

I favored the evidence of the Tenant over the Landlord because the Tenant's evidence was forthright and credible and the Landlord provided evasive and contradictory testimony. Specifically, when asked if the owner resided in the upper level of the rental address the Landlord first stated he used to, on occasion, and after being reminded of her affirmation she confirmed he resided there. Then later in the hearing when asked when the partial refund check was mailed she made a statement that indicated she knew the Tenant had provided a copy of the envelope in her evidence, when it had not previously been mentioned during the hearing.

Based on the above, I find the Tenant served both the owner and his agent with copies of her evidence in accordance with the Act. Therefore, I considered all the documentary evidence and testimony, and on a balance of probabilities, I find as follows:

Notwithstanding the fact that the parties did not manage the sublease or security deposits in accordance with the *Act*, I find they both operated under the opinion that the Tenants had sub-leased the rental unit with the Landlord's permission. Furthermore, I find: (a) the Tenants paid a total of \$1,250.00 (\$650.00 + \$600.00) as the security deposit; (b) the tenancy agreement was scheduled to end on August 31, 2012; (c) the Landlord received the Tenants' forwarding address in writing on August 31, 2012; and (d) the Landlord mailed a partial refund of \$860.00 on September 24, 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 September 15, 2012. They did neither, instead they returned a portion of the deposit.

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 deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find the Tenants have succeeded in meeting the burden of proof and I award them return of double their deposit plus interest, less the partial refund.

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

Monetary Award:

Double the deposit (2 x \$1,250.00)	\$2,500.00
Plus Interest:	0.00
Filing fee	50.00
LESS: partial payment	<u>(- \$860.00)</u>
Total amount due to the Tenants	<u>\$1,690.00</u>

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$1,690.00**. 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: January 29, 2013

Residential Tenancy Branch

