



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was scheduled in response to an application by the tenants for a monetary order as compensation for return of a portion of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is a written tenancy agreement in evidence for a fixed term of tenancy from March 15, 2012 to March 1, 2013. Monthly rent of \$775.00 is due and payable in advance on the first day of each month, and a security deposit of \$387.50 was collected. A move-in condition inspection report was not completed.

By way of mutual agreement, tenancy ended effective on or about September 30, 2012. The tenants left a forwarding address in written form within the unit, along with the unit keys when they vacated. A move-out condition inspection report was not completed.

Subsequently, the landlord incurred a cost of \$100.80 for cleaning the carpets. She withheld this amount from the tenants' security deposit of \$387.50, and sent them a cheque for what she calculated was the balance of the security deposit of \$286.80. In fact, arithmetically, the balance remaining after the \$100.80 deduction is \$286.70. The tenants seek reimbursement of the amount withheld which is \$100.80. In light of the \$00.10 "overpayment" in the cheque mailed to the tenants, the amount at issue for repayment is therefore \$100.70.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section of the Act provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, unless the tenant agrees in writing that the landlord may retain all or a portion of the security deposit, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, the tenants did not agree in writing that the landlord may withhold all or a portion of the security deposit. Neither did the landlord repay the security deposit or file an application for dispute resolution within 15 days after the end of tenancy, or the date when the tenants provided a forwarding address; I find that the date when tenancy ended and the date when the tenants' forwarding address was provided is the same: September 30, 2012.

Despite the above statutory provisions, the tenants seek only the portion of the security deposit which has not been repaid, in addition to recovery of the filing fee.

Based on the documentary evidence and testimony, I find that the tenants have established entitlement to compensation of **\$150.70**, which is calculated as follows:

$\$387.50$ (security deposit) - $\$286.80$ (amount repaid) = **$\$100.70$** (balance owed)
 $\$50.00$: filing fee

Finally, for information, the attention of the parties is also drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$150.70**. Should it be necessary, this order may be served on the landlord, filed in the 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 31, 2013

Residential Tenancy Branch

