



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 tenants' application of October 25, 2012 seeking a Monetary Order for return of their security deposit retained without consent or without the landlord having made application for dispute resolution to claim against it.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of their security deposit or portion retained without authorization and whether the amount should the amount must be doubled as required by section 38(6) of the *Act*.

Background and Evidence

This tenancy began on August 1, 2008 and ended on October 9, 2012 pursuant to the tenants' 10-day notice to end tenancy as permitted under section 50 of the *Act* as the tenants had been given a two-month Notice to End Tenancy for landlord use.

Rent was \$946 and the landlord held a security deposit of \$450 paid on or about August 1, 2008.

During the hearing, the attending tenant submitted a copy of an email dated September 17, 2012 to the landlord giving notice to end the tenancy and providing a forwarding address but missing the postal code. The landlord sent an email to the tenant on October 23, 2012 stating that the security deposit cheque was ready for the tenants and that he needed the postal code. When he received no response, he emailed a reminder on October 27, 2012.

The tenant said he did not receive the landlord's email because he had not yet set up his computer at his new residence.

The parties also exchanged emails in an effort to arrange completion of the move-out condition inspection report but they were unable to find a mutually agreeable time and the landlord did not serve the tenants with the final notice of inspection on the approved form as required under section 35 of the *Act* and *Regulation 17*.

After receiving the Notice of Hearing which contained the tenants' full address with postal code, the landlord sent the tenants a cheque for \$249.40 sent by mail in an envelope post marked October 30, 2012 with the cheque dated October 23, 2012.

The parties were uncertain as to when the tenants had returned the keys, the tenants stating that they were returned to the landlord's agent some days after the tenancy ended and the landlord stating that he did not know. Section 37 of the *Act* requires that keys must be returned when the tenants leave the rental unit.

The landlord stated that he had retained a portion of the security deposit to cover the cost of two NSF cheques and hydro billings.

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, I find that both parties breached the legislation. The landlord breached by failing to give proper notice for the move-out condition inspection to make application to claim against the deposit within 15 days of the end of the tenancy. The tenants breached by failing to return the keys and delaying provision of their complete address.

Given the uncertainty arising from the failed move-out inspection, return of keys and provision of the complete forwarding address, I find that the portion of the deposits returned to the tenants was on time.

However, I find that the tenants are entitled to return of the contested portion of their security deposit and that the amount should be doubled.

In addition, I find that the tenants are entitled to recover their filing fee for this proceeding from the landlord.

Therefore, I find that the tenants are entitled to a Monetary Order calculated as follows:

Security deposit	\$450.00
Interest (August 8, 2008 to date)	<u>2.82</u>
Subtotal of tenants' credit	\$452.82
Less amount of deposit returned	<u>- 249.40</u>
Amount retained by landlord without authorization	\$203.42
To double amount retained without authorization	203.42
Filing fee	<u>50.00</u>
TOTAL	\$456.84

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$456.84**, 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: January 14, 2013

Residential Tenancy Branch

