



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC and FF

Introduction

This hearing was convened on the tenants' application of October 22, 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. The tenants also sought a monetary award for return of rent for the last four days of the tenancy and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for return of their security deposit, should the amount be doubled? Are the tenants entitled to return of rent?

Background and Evidence

This co-tenancy began on October 1, 2010 and ended on September 30, 2012, although the tenants had effectively vacated on September 27, 2012. Rent was \$1,050 and the landlord held a security deposit of \$525 paid on September 14, 2010.

During the hearing, the attending tenant gave evidence that the landlord had issued two cheques of \$225 each dated October 15, 2012 to the two tenants. However, he stated that the cheques were NSF and that the deposit remained unreturned..

The landlord concurred that the account held insufficient funds to honor the cheques. She stated that the tenants' insistence that the deposit be returned in cash had held matters up and that an officer of the branch had advised her to await the hearing before making payment. That advice was made in the context of the tenants' application having been made after the 15 day time limit and an order for double was possible.

The landlord stated that she intended to make application for a claim against the tenants, but had not yet done so.

The parties concurred that the landlord had the tenants' forwarding address on September 30, 2012.

The attending tenant gave further evidence that he wished to claim return of the last four days rent on the grounds that, when he attended the rental unit on September 27, 2012, the succeeding tenant was in the rental unit painting it. He stated that the tenants had suffered no loss as a result.

The landlord stated that the new tenant was only in the rental unit for four hours and that he had paid no rent for the early and temporary access.

Analysis

As security deposit is a payment made in trust to a landlord and may only be accessed by the landlord with consent of the tenants or by an order of the director's delegate resulting from a dispute resolution proceeding.

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) of the *Act*.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the deposits.

In the present matter, I find that landlord breached section 38(1) of the *Act* by failing to return the deposit or make application to claim against it within 15 days of the end of the tenancy and receipt of the tenants' forwarding address and must return the deposit in double.

As to return of rent from September 27 to September 30, 2012, I accept the evidence of the landlord that the new tenant was in the rental unit for only a few hours and paid no rent until his tenancy began on October 1, 2012. I further find and the attending tenant concurred that the tenants suffered no loss due to the new tenant painting. This claim is dismissed without leave to reapply.

As the application has succeeded on one of the two claims, I find that the tenants are entitled to recover one half of the 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 (No interest due)	\$ 525.00
To double the security deposit as per s. 38(6) of the <i>Act</i>	525.00
One half of filing fee	<u>25.00</u>
TOTAL	\$1,075.00

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$1,075.00**, 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 22, 2013

Residential Tenancy Branch

