



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 8, 2013, by the Tenants to obtain a Monetary Order for the return of their security deposit.

The Tenants affirmed that the Landlord was served copies of the application for dispute resolution and notice of hearing documents by registered mail on January 08, 2013. Canada Post tracking receipts were provided in the Tenants' evidence. Based on the submissions of Tenants I find that the Landlord was sufficiently served notice of this proceeding and I continued in the Landlord's absence.

Issue(s) to be Decided

Should the Tenants be issued a Monetary Order?

Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: the move-in and move-out condition inspection report form; Canada Post receipts; and their written statement.

The Landlord did not submit documentary evidence despite being served notice of this proceeding in accordance with the Act.

The Tenants testified that they entered into a month to month tenancy that began on April 1, 2012 and ended November 30, 2012, after they gave proper notice to end the tenancy. Rent was payable on the first of each month in the amount of \$700.00 and on March 27, 2012 they paid \$350.00 as the security deposit.

The Tenants stated that they attended the move out inspection on November 30, 2012 and wrote their forwarding address on the move out condition inspection form that same date. As per the move out form they were supposed to have the full \$350.00 security

deposit returned to them; however the Landlord stopped taking their calls after they moved out.

The Tenants stated that after they filed their application for dispute resolution they received a \$350.00 cheque from the Landlord in regular mail. They testified that the cheque was dated January 7, 2013, and the envelope was post marked January 9, 2013. They cashed the cheque shortly after they received it.

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*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

I accept the undisputed evidence that the tenancy ended November 30, 2013 and the Landlord was provided the Tenants' forwarding address on November 30, 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 Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than December 15, 2012. The Landlord waited until January 9, 2013 before mailing the deposit.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 and pet deposit and the landlord must pay the tenant double the security deposit.

I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security deposit plus

interest in the amount of **\$350.00** (2 x \$350.00 - \$350.00 received after Jan 9, 2013 + \$0.00 interest).

Conclusion

The Tenants has been awarded a Monetary Order in the amount of **\$350.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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: March 22, 2013

Residential Tenancy Branch

