



Dispute Resolution Services

Page: 1

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 January 9, 2013 seeking a Monetary Order for return of a portion 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

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

Background and Evidence

This tenancy began on October 1, 2011 and ended on October 31, 2012. Rent was \$875 per month and the landlord held a security deposit of \$440 paid on September 18, 2011.

During the hearing, the attending tenant gave evidence that, as she was relocating to Alberta and anticipated possible multiple moves, she had provided the landlord with her mother's address to be used as the tenants' address for service.

The landlord stated that she had been of the belief that the tenant was obliged to provide her specific residence address. Therefore, she declined to forward the uncontested portion of the security deposit to the address provided and, for the same reasons, did not make application for dispute resolution to claim against the deposit.

The landlord submitted evidence for the present hearing in support of claims for damage to the rental unit. However, such evidence could not be considered as she had not made application, but remains at liberty to do so.

The tenant stated that she had given the landlord tacit approval to retain an amount from security deposit to pay the tenants' portion of the utilities billings at the end of the tenancy. The amount was \$106.62.

The parties did conduct a joint move-out condition inspection on November 1, 2012.

Analysis

As noted during the hearing, the address for service provided by the tenant was sufficient for the landlord to make application for dispute resolution and for return of the security deposit.

A security deposit is a payment held in trust against which a landlord may claim only with consent of a tenant or authorization obtained during a dispute resolution hearing.

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 a security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise 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 deposit.

In the present matter, I find that the landlord neither returned the deposit nor made application to claim against it with 15 days of the end of the tenancy and receiving the tenants' address for service. Therefore, 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, as the application has succeeded on its merits, 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	\$440.00
Less utilities deduction agreed to by tenants	- <u>106.62</u>
Amount retained by landlord without authorization	\$333.38
To double amount retained without authorization	333.38
Filing fee	<u>50.00</u>
TOTAL	\$716.76

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$716.76**, 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: April 02, 2013

Residential Tenancy Branch

