



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD; FF

Introduction

This is the Tenants' application for a monetary order for double the security deposit and to recover the cost of the filing fee from the Landlord.

The Tenants gave affirmed testimony at the Hearing.

It was determined that the Tenants mailed the Notice of Hearing documents to the Landlord at the Landlord's address for service, by registered mail, on February 20, 2013. The Tenants testified that the documents were returned to them. The Tenants provided a copy of the receipt and tracking number for the registered documents, along with a copy of the returned envelope marked "unclaimed". The Canada Post Tracking information indicates that attempted delivery of the documents was made on February 21, 2013, and a notice card was left indicating where the documents could be picked up. On March 1, 2013, a second and final notice card was left for the Landlord.

Section 89(1) of the Act provides for service by registered mail. Section 90 of the Act deems service in this manner to be effective 5 days after mailing the documents. Failure to accept service does not change the service provisions of the Act. Therefore, I find that the Landlord was duly served with the Notice of Hearing documents on February 25, 2013.

Issue to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenants gave the following testimony:

This tenancy started on July 7, 2012 and ended on December 31, 2012. The Tenants paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$100.00.

The Tenants met with the Landlord for a “walk through” of the rental unit at the pre-arranged time of 10:00 a.m., January 2, 2013. The Landlord did not complete a Condition Inspection Report with the Tenants.

After the walk-through, the Landlord stated that the rental unit was clean and undamaged and that the Tenants could expect full return of the security and pet damage deposits. The Tenants provided the Landlord with their forwarding address in writing and received his acknowledgement of receipt of their forwarding address, on a card. The Tenants provided a copy of the card, in evidence, which includes the Landlord's signature.

The Tenants waited until January 18, 2013, and then called the Landlord, who told them that he had mailed them a cheque on January 16, 2013, to the address they provided. On January 25, 2013, they had still not received the cheque, so they called the Landlord again and asked him to send a new cheque as the original one must have been lost in the mail.

The Tenants have not received any of their security or pet damage deposit.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security or pet damage deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit and pet damage deposits in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security and pet damage deposits.

Section 38(6) of the Act provides 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. Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the deposits, in the total amount of **\$1,000.00** ($[\$400.00 + \$100.00] \times 2$)

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$1,050.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 17, 2013

Residential Tenancy Branch

