



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIDDOO AK INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenants be granted a Monetary Order?

Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: their written submission; the tenancy agreement; the move out condition inspection report form; and the partial refund cheque #0654 and the envelope it was mailed in.

The Landlord submitted documentary evidence which included, among other things, copies of: the move out inspection report form; their written submission; the tenancy agreement; an invoice; and photos of the rental unit.

The parties confirmed they entered into a fixed term tenancy agreement that began on September 1, 2007 and switch to a month to month tenancy after February 29, 2008.

Rent was payable on the first of each month and began at \$860.00 per month. The rent was subsequently increased to \$972.00 per month by the end of the tenancy. On August 14, 2007 the Tenants paid \$430.00 as the security deposit. There was no record of a move in inspection report and the move out report was completed on January 30, 2013.

The Tenants testified that the Landlord withheld over \$100.00 from their security deposit without their written permission to do so. They pointed out that the Landlord did not complete a move in inspection report form; therefore, the Landlord could not make a claim against their deposit.

The Tenants stated that the Landlord sent a partial refund of \$330.00 to the wrong address on February 7, 2013. They did not receive the cheque from their neighbour until February 24, 2013. They are still holding this cheque but have not yet cashed it.

The Landlord confirmed he withheld \$100.00 from the security deposit. He confirmed that has not filed an application for dispute resolution; he does not possess an Order giving him the authority to make the deduction; and he does not have the Tenant's written permission to allow him to withhold money from the deposit.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

When a landlord fails to properly complete a condition inspection report, the landlord's right to claim against the security deposit for damage to the property is extinguished. Because the Landlord in this case did not complete a move in condition inspection report they lost their right to claim any portion of the security deposit for damage to the property. Therefore, the Landlord was required to return the security deposit to the Tenants within 15 days of the later of the two: (1) of the tenancy ending; and (2) having received the tenant's forwarding address in writing.

In this case, the Landlord received the Tenants' forwarding address on January 30, 2013, during the move out inspection. The Landlord issued the Tenants a refund in the amount of \$330.00 and the balance of \$100.00 plus interest was retained by the Landlord.

The Landlord confirmed that they do not have an Order allowing them to keep the money and they do not have the Tenants' written consent to retain that portion of the security deposit.

Based on the foregoing, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord must pay the tenant double the security deposit.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Based on the foregoing, I find that the Tenants have succeeded in proving their claim and I award them monetary compensation as follows:

Double the security deposit (2 x \$430.00)	\$860.00
Interest owed on the \$430.00 deposit	8.95
Filing fee	<u>50.00</u>
AMOUNT DUE THE TENANTS	<u>\$918.95</u>

If the Tenants are able to cash the cheque for \$330.00 that amount would be deducted from the monetary award owed by the Landlord.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$918.95**. 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: May 23, 2013

Residential Tenancy Branch

