



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 21, 2013, 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 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 Tenant be granted a monetary order?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on November 1, 2010 and switched to a month to month tenancy after April 30, 2011. Rent was payable on the first of each month in the amount of \$1,000.00 and on October 22, 2010, the Tenant paid \$500.00 as the security deposit. A move in condition inspection report form was completed and signed by both parties at the onset of the tenancy. The move out inspection was conducted on February 28, 2013; however, the Tenant refused to sign the form because he did not agree with the deductions that the Landlord had written on the form.

The Tenant testified that he provided his forwarding address to the Landlord on February 28, 2013. He did not sign the condition inspection report form because he did not agree with the amounts the Landlord was attempting to deduct so he said he would take it to arbitration.

The Landlord confirmed that deductions were made from the deposit without the Tenant's written permission. She stated that the items that were deducted should be listed on the cheque. She does not know if a claim was brought against the Tenant by her head office. During the hearing I confirmed that there were no claims brought against the Tenants by the Landlord.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant 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.

In this case the Landlord issued the Tenants a cheque for a partial refund of their deposit in the amount of \$142.00. \$358.00 of the \$500.00 deposit was retained by the Landlord.

The Landlord confirmed they do not have the Tenants' written consent to retain \$358.00 of the security deposit and there is no evidence that the Landlord applied for dispute resolution to keep any portion of the security deposit.

The undisputed evidence was the tenancy ended February 28, 2013, and the Tenants provided the Landlord with their forwarding address on February 28, 2013.

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 March 15, 2013.

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.

Based on the above, I find that the Tenants have met the burden of proof and I award them compensation in the amount of **\$1,000.00** (2 x \$500.00 security deposit + \$0.00 interest).

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

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$1,050.00** (\$1,000.00 + \$50.00). 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.

The Tenants had previously been issued a cheque from the Landlord in the amount of \$142.00. When this cheque is cashed and clears the bank the monetary award would be reduced by this amount and the Landlord will be required to pay the Tenants the balance of \$908.00 (\$1,050.00 - \$142.00).

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*.

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Dated: June 13, 2013

Residential Tenancy Branch

