



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD O FF

Preliminary Issues

Upon review of the Tenant's application the Landlord W.H. requested that his name be added as a respondent to this dispute because he is co-owner and co-landlord of the property. The Tenant confirmed that W.H. was a co-landlord; however she primarily dealt with D.H. regarding tenancy issues. She did not dispute the request for change. Accordingly, I amended the style of cause to include W.H., in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 22, 2013, by the Tenant. The Tenant has sought a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlords 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 and respond to each other's testimony. 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 awarded a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: her letter dated February 14, 2013; pages from the *Residential Tenancy*

Branch guide for landlords and tenants; copies of receipts for items deducted from her deposit.

The Landlords submitted documentary evidence which included, among other things, copies of: their written submission; their cheque #299 dated October 2, 2012 for \$195.00 as partial refund of the deposit; a 2 Month Notice; receipts for repairs completed on the rental unit; and photos of the rental unit.

The parties confirmed that the Tenant had occupied the rental unit from approximately May 2006 when she entered into a tenancy agreement with the previous owner. The current Landlord's purchased the property in approximately 2008 and entered into a written tenancy agreement with the Tenant on April 1, 2008. The rent was increased to \$767.25 per month and in May 2006 the Tenant paid \$375.00 as the security deposit. There is no record of a move in condition inspection report form and the current Landlords did not complete a move out condition form.

The Tenant testified that she vacated the unit by September 30, 2013, and provided the Landlords with her forwarding address in writing. She said she mailed her February 14, 2013 letter requesting the return of the balance of her security deposit and included her forwarding address. She confirmed receiving and cashing the partial payment of \$195.00 shortly after October 2, 2012. She is seeking double her security deposit plus the interest owed.

The Landlords argued that the Tenant did not finish moving out by September 30, 2013 because she was still moving stuff a few days later. They confirmed they received her forwarding address a few days after February 14, 2013, but could not recall the exact date. They stated that they do not have the Tenant's written permission to authorize them to keep part of the deposit; they do not have an order granting them authority to keep the deposit; and they have not made application for dispute resolution. After a brief discussion the Landlords confirmed they understood that they would have to make their own application for dispute resolution if they wished to seek compensation for any damage or loss they may have suffered.

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.

The evidence supports the tenancy ended sometime around September 30, 2012, and that the Tenant mailed the Landlords her forwarding address on February 14, 2013. Therefore I find the Landlords received the forwarding address on February 19, 2013, five days after it was mailed, in accordance with section 90 of the *Act*.

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 Landlords were required to return the Tenant's security deposit **in full** plus interest by March 6, 2013. They returned only a portion of the deposit.

Based on the above, 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 may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit plus interest owed.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double the security deposit plus interest as follows

Double security deposit (2 x \$375.00)	\$750.00
Interest owed on \$375.00 from May 2006	<u>12.65</u>
SUBTOTAL	\$762.65
LESS: Partial refund	<u>- 195.00</u>
AMOUNT DUE TO THE TENANT	<u>\$ 567.65</u>

The Tenant has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$617.65** (\$567.65 + \$50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do 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: June 20, 2013

Residential Tenancy Branch

