



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 male Tenant ("SM") gave affirmed testimony at the Hearing.

SM testified that he served the Landlord with the Notice of Hearing documents by registered mail sent March 22, 2013. He stated that he sent the registered mail to the address provided by the Landlord on the tenancy agreement. A copy of the tenancy agreement and registered mail receipt were provided in evidence. SM stated that the documents were returned "unclaimed" on April 16, 2013.

I find that the Tenants duly served the Landlord with notice of today's Hearing and a copy of their Application, pursuant to the provisions of Section 89(1)(c) of the Act. Failure to accept service of documents does not affect the service provisions of the Act.

The Landlord did not sign into the teleconference and the Hearing continued in his absence.

Issues 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

SM gave the following testimony:

- This tenancy started on October 1, 2010 and ended on February 22, 2013. The Tenants paid a security deposit in the amount of \$1,100.00 and a pet damage deposit in the amount of \$1,100.00 at the beginning of the tenancy.

- The Tenants and the Landlord arranged to meet for a condition inspection of the rental unit on February 23, 2013. The Tenants attended at the rental unit on February 23, 2013, but the Landlord did not show up. The new occupants were there painting the rental unit.
- The Tenants provided the Landlord with written notification of their forwarding address on February 25, 2013, by mailing the forwarding address to the Landlord at his address for service.
- The Tenants did not agree that the Landlord could retain any of the security or pet damage deposits. There is no Order of the Director allowing the Landlord to retain any of the security or pet damage deposits.
- The Landlord has not returned the deposits to the Tenants.

Analysis

Security deposits and pet damage deposits are held in a form of trust by a landlord for a tenant, 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 consent to retain a portion of the deposits) 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 deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the deposits.

The Landlord has not did not file an application for dispute resolution against the deposits and has not returned any of the deposits to the Tenants.

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 security deposit. Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the security and pet damage deposits, in the amount of **\$4,400.00**.

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 **\$4,450.00** 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: June 20, 2013

Residential Tenancy Branch

