



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenants and landlord DK's spouse, appearing as agent for DK, appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-Landlord MC did not appear at the hearing. The tenants submitted that he was served the Notice of Hearing and their application via registered mail to an address they located on a search engine website, after having called and confirmed that the landlord lived at this address. From the evidence submitted, I was unable to conclude that landlord MC was served in accordance with section 89 of the Act as required as I had no corroboration that MC resided at the address used, and I have therefore excluded him from any further consideration in this matter.

Issue(s) to be Decided

Are the tenants entitled to a monetary order, which includes their security deposit, and to recover the filing fee?

Background and Evidence

The tenants submitted that this tenancy began on June 1, 2007, ended on June 1, 2013, monthly rent was \$1200, and they paid a security deposit of \$600 at the beginning of the tenancy.

As to the relationship between landlords DK and MC, who were both listed as landlords on the tenancy agreement, the tenants submitted that they understood that MC was an agent of DK, the owner, that MC collected the security deposit, and they were instructed to pay all rent to DK.

The tenants submitted documentary evidence showing that their rent cheques during the course of the tenancy were paid to DK.

The tenants gave evidence that the landlords were provided the tenants' written forwarding address on June 21, 2013, via registered mail. The tenants supplied a copy of the letter.

Section 90 of the Act states that documents served by registered mail are deemed delivered five days later. Thus the landlord was deemed to have received the letter containing the tenants' written forwarding address on June 26, 2013.

The tenants stated that the landlords have not returned their security deposit and are seeking monetary compensation of \$1200, which is their security deposit of \$600, doubled.

Although EK acknowledged receiving the tenants' written forwarding address, she denied that DK was a landlord to the tenants, as MC, who accepted the tenancy, was only a tenant of DK and never a business partner.

EK claimed that MC acted on his own in renting out the rental unit, as DK was aware that MC rented the rental unit to other parties.

There is no dispute that the tenants' security deposit has not been returned and that neither landlord has filed for dispute resolution.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

As to the relationship of the tenants to DK, I find the evidence to be conclusive that MC acted on behalf of DK, who owned the residential property, and therefore was his authorized agent. In reaching this conclusion, I relied on the rent cheques of the tenants during the course of this tenancy, showing payment to DK.

Additionally, I relied on the evidence of DK, which was a letter from MC showing that MC forwarded tenancy agreements of other tenants to DK, and that these tenants and other tenants were to give their rent cheques to DK. Additionally, DK even supplied a copy of the tenancy agreement showing himself and MC as landlords.

As I have concluded that DK was a landlord and had properly been served the Notice of Hearing and the tenants' application, as shown by EK's appearance, I next considered the matter of the tenants' security deposit.

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In the case before me, the undisputed evidence shows that the tenancy ended on June 1, 2013, and that the landlord received the tenants' written forwarding address via registered mail by June 26, 2013, the landlord has not applied for dispute resolution claiming against the security deposit, and has not returned any portion of the tenants' security deposit.

I therefore grant the tenants' application for dispute resolution and order that the landlord pay the tenants double their security deposit.

I find that the tenants are entitled to a monetary award of \$1264.36, comprised of their security deposit of \$600, doubled to \$1200, interest of \$14.36 and for recovery of the filing fee of \$50 due to the tenants' successful application.

Conclusion

The tenants' application has been granted.

I grant the tenants a final, legally binding monetary order in the amount of \$1246.36, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The landlord is advised that costs of such enforcement are subject to recovery from the landlord.

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* and is being mailed to both the applicants and the respondent.

Dated: October 25, 2013

Residential Tenancy Branch

