



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND, MNR, MNSD, FF
For the tenant: MNDC, MNSD, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenants’ security deposit, a monetary order for unpaid rent and alleged damage to the rental unit, and for recovery of the filing fee.

The tenants applied 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.

Despite having his own application for dispute resolution set for this date the landlord did not attend the telephone conference call hearing.

The tenants submitted evidence that they served each of the landlords listed in the tenancy agreement with their Application for Dispute Resolution and Notice of Hearing by registered mail on August 15, 2013. The tenants supplied the registered mail receipts showing the tracking number of the registered mail envelopes and submitted the address used was the same as in the tenancy agreement and the landlords’ application for dispute resolution.

I find the landlords were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the “Act”) and the hearing proceeded in the landlord’s absence.

The tenants 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 oral and documentary evidence 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-As the landlords failed to attend the dispute resolution hearing on their own application, I dismiss their application without leave to reapply, pursuant to section 10.1 of the Rules.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation comprised of their security deposit, doubled, and to recover their filing fee?

Background and Evidence

The tenants supplied undisputed evidence that this tenancy began in July 2011, ended on July 28, 2013, monthly rent was \$2800, and they paid a security deposit of \$1400 at the beginning of the tenancy.

The tenants gave evidence that the landlords were provided the tenants' written forwarding address on June 24, 2013, via registered mail. The landlord used this address to serve the tenants with their application for dispute resolution filed August 13, 2013. Section 90 of the Act states that documents served by registered mail are deemed delivered five days later. Thus the landlords were deemed to have received the notice and written forwarding address on June 29, 2013.

The tenants stated that the landlords have not returned their security deposit and are seeking monetary compensation of \$2800, which is their security deposit of \$1400, doubled.

The tenant's relevant documentary evidence included the tenancy agreement, registered mail receipts, photos of the rental unit, and a copy of the tenants' notice to vacate containing the tenants' written forwarding address.

Analysis

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

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.

I do not find the tenants' right to a return of their security deposit has been extinguished in this case.

In the case before me, the undisputed evidence shows that the landlords were deemed to have received the tenants' written forwarding address on June 29, 2013 and the tenancy ended on July 28, 2013. Thus the landlords had until August 12, 2013, to file their application for dispute resolution claiming against the tenants' security deposit; instead the landlords have not returned any portion of the tenants' security deposit and filed their application for dispute resolution on August 13, 2013. Additionally the landlords failed to attend the hearing on their application for dispute resolution claiming against the tenants' security deposit.

I therefore grant the tenants' application for dispute resolution and order that the landlords pay the tenants double their security deposit of \$1400.

I find that the tenants are entitled to monetary award in the amount of \$2850, comprised of their security deposit of \$1400, doubled to \$2800, and for recovery of the filing fee of \$50 due to the tenants' successful application, and are therefore entitled to a monetary order in that amount.

Conclusion

The tenants' application has been granted.

I therefore grant the tenants a final, legally binding monetary order in the amount of \$2850, which I have enclosed with the tenants' Decision.

Should the landlords 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 landlords are advised that costs of such enforcement are subject to recovery from the landlords.

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 applicant/landlords and the applicant/tenants.

Dated: November 25, 2013

Residential Tenancy Branch

