



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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 and for recovery of the filing fee.

The parties 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, the landlord did not raise any issues regarding service of the application or the evidence.

The landlord did not supply any documentary evidence.

Thereafter both 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.

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 tenant provided that this tenancy began on September 1, 2008, ended on September 1, 2013, monthly rent at the end of the tenancy was \$1050, and a security deposit of \$500 was paid by the tenants at the beginning of the tenancy.

The landlord agreed.

The tenant stated that the landlord failed to perform a move-in inspection at the beginning of the tenancy; therefore there were no condition inspection reports regarding the condition of the rental unit at the beginning.

The tenant stated that she and her husband performed a walk-through at the end of the tenancy.

The landlord confirmed that there were no condition inspection reports as the same is required under the Act.

The tenant gave evidence that the landlord was provided the tenants' written forwarding address on a piece of paper on September 7, 2013, the date of the letter.

The tenant stated that the landlord has not returned their security deposit and is seeking monetary compensation of \$500, which is the amount of their original security deposit.

In response to my question, the tenant stated that she only wanted her original security deposit returned, along with being granted a filing fee, and was not seeking double her security deposit.

The tenant's relevant documentary evidence included a copy of the notice of the written forwarding address, a tenancy agreement, and a copy of a note, signed by the landlord, noting that a "walkthrough complete and good."

The landlord acknowledged receiving the tenant's written forwarding address on September 7, 2013, has not returned any portion of the security deposit, and that he has not filed for dispute resolution. The landlord suggested that there was damage by the tenants as the reason the security deposit was not returned.

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 tenant's right to a return of their security deposit has been extinguished.

In the case before me, the undisputed evidence shows that the tenancy ended on September 1, 2013, and that the landlord received the tenant's written forwarding address on September 7, 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 tenant's application for dispute resolution and order that the landlord return the tenants' security deposit. I have not doubled the tenants' security deposit as the tenant specifically waived her right to receive double their security deposit.

I find that the tenants are entitled to monetary award in the amount of \$552.50 comprised of their security deposit of \$500, interest on the security deposit of \$2.50, and for recovery of the filing fee of \$50 due to the tenants' successful application, and is 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 \$552.50, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenant 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: November 15, 2013

Residential Tenancy Branch

