



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

The tenants applied under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for return of their security deposit and pet damage deposit, and to recover their filing fee.

The tenants and the landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Issue to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The written tenancy agreement was submitted in evidence. A fixed term tenancy began on December 15, 2011 and reverted to a month to month tenancy after December 15, 2012. Monthly rent was originally \$1,080.00 and due on the first day of each month and was subsequently increased during the tenancy to \$1,120.00 per month. A security deposit of \$540.00 and a pet damage deposit of \$400.00 was paid by the tenants at the start of the tenancy according to the tenancy agreement.

The parties agreed that the tenants vacated the rental unit on May 3, 2013. The tenants stated that they provided their written forwarding address by e-mail to the landlord on

April 1, 2013. The parties agreed that the landlord responded to that e-mail on April 11, 2013. The parties also agreed that the tenants surrendered \$560.00 of the combined security deposit and pet damage deposit (the “deposits”) as compensation to the landlord for the unpaid portion of May 1-15, 2013 rent, leaving a balance of deposits owed to the tenants in the amount of \$380.00. The landlord confirmed that she did not apply to claim towards the tenants’ remaining security deposit or pet damage deposit balance under the *Act*.

The tenants clarified during the hearing that they are seeking double the amount of \$380.00, which is the balance of their security deposit and pet damage deposit that they did not surrender to the landlord, plus the \$50.00 filing fee.

Analysis

Based on the documentary evidence and testimony provided during the hearing, and on a balance of probabilities, I find the following. The landlord confirmed that she has retained \$380.00 of the tenants’ security deposit and pet damage deposit without permission to retain the \$380.00 portion retained. The landlord also confirmed that she did not file an application under the *Act* claiming towards the security deposit or pet damage deposit. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days** after the **later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application** for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord **does not comply** with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

[emphasis added]

Based on the above, **I find** that the landlord had received the tenants forwarding address as of April 11, 2013 and that the tenants vacated the rental unit on May 3, 2013. **I find** the landlord failed to repay the remaining \$380.00 balance of the tenants' security deposit/pet damage deposit or make an application within 15 days of May 3, 2013, which was the later of the two dates referred to under section 38(1) described above. Therefore, **I find** the tenants are entitled to double the remaining \$380.00 balance of their security deposit and pet damage deposit, which has not accrued interest to date, for a total owing by the landlord to the tenants in the amount of **\$760.00**.

As the tenants' application had merit, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

I find that the tenants have established a total monetary claim of **\$810.00** comprised of double the security deposit and pet damage deposit balance of \$380.00 which is \$760.00, plus the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$810.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants have established a total monetary claim of \$810.00 comprised of double the security deposit and pet damage deposit balance of \$380.00 which is \$760.00, plus the \$50.00 filing fee.

The tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$810.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision written in both the English and Traditional Chinese languages.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 13, 2013

Residential Tenancy Branch

