



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of their security deposit and the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 3, 2014. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenants in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of the security deposit?

Background and Evidence

This tenancy started on October 1, 2008 as a one year tenancy and then continued on a month to month tenancy. The tenancy ended November 17, 2013. Rent was \$1,565.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$800.00 in advance of the tenancy. The Tenant said he did not think there was a move in condition inspection report done and there was no move out inspection report completed. The Landlord said they completed a move in condition inspection report, but he did not submit it with his evidence package. The Landlord said no move out condition inspection report was completed.

The Tenants said that they moved out of the rental unit on November 17, 2013 and they registered mailed their forwarding address to the Landlord on December 9, 2013. The Tenants continued that the Landlord has not returned their security deposit to date.

The Landlord said he has not made an application to retain the Tenants security deposit, but he has kept it. The Landlord said the rental unit was new at the start of the tenancy and the Tenants damaged the unit. The Landlord said he submitted digital evidence to support his claims.

The Parties were informed that section 24 and 36 of the Act state a landlord's claim on the tenant's security deposit is extinguished if the condition inspection reports are not completed as required by the Act and regulations. As well the Landlord was informed that section 38 of the Act awards double the tenant's security deposit if the security deposit is not returned or if the landlord does not make an application to retain the security deposit within 15 days of the end of tenancy and receiving the tenant's forwarding address in writing. In this situation the Landlord did neither of these things so the Tenant is entitled to double the security deposit in the amount of \$1,600.00.

The Tenant said they only want their original security deposit of \$800.00 and the filing fee of \$50.00 as they applied for originally. The Tenant continued to say they hoped the Landlord would return their deposit as soon as possible for their concession.

The Landlord said he would return the security deposit as soon as he received the monetary order from the Tenant.

Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I accept the Tenants' testimony that they registered mailed their forwarding address to the Landlord on December 9, 2013. Section 90 of the Act states items served by registered mail are deemed to be served 5 days after mailing or in this case on December 14, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by December 29, 2013. Consequently I find the Tenants are entitled to double the security deposit of \$800.00 in the amount of $\$800.00 \times 2 = \$1,600.00$ plus accrued interest, but as the Tenant have requested only their original security deposit of \$800.00; I award the Tenants \$800.00 plus accrued interest from October 1, 2008 to April 15, 2014 in the amount of \$3.02.

As the Tenants have been successful in this matter, they are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. Pursuant to s. 38(4), 67 and 72 of the Act the Tenants have received a monetary Order for \$853.02 representing their original security deposit of \$800.00 plus accrued interest of \$3.02 and the recovery of the filing fee in the amount of \$50.00.

Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$853.02 to the Tenants. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: April 15, 2014

Residential Tenancy Branch

