



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; OLC; FF

Introduction

This is the Tenants' application for a monetary order for double the security deposit; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenants sent the Landlord the Notice of Hearing documents by registered mail sent June 25, 2014. It was also determined that the Tenants sent the Landlord copies of their documentary evidence by registered mail on September 12, 2014. The Tenants provided

Preliminary Matters

The Tenants' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenants' application is dismissed.

The Tenants indicated in the "Details of Dispute Resolution" section that they are requesting to recover the cost of the filing fee from the Landlord and therefore I amended the Tenants' application to include that Dispute Code.

The Tenants' Application also seeks return of a pet damage deposit; however, the parties agreed that although the Tenants provided a cheque in the amount of \$600.00 at the beginning of the tenancy as a pet damage deposit, the Landlord did not cash the cheque. Therefore, this portion of their claim is dismissed. The Landlord stated that she did not know if she still has the cheque. **I ORDER** that the Landlord return the

cheque, uncashed, to the Tenants if she locates it. The pet damage deposit is no longer a valid deposit.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on January 1, 2010. The Tenants moved out of the rental unit on March 8, 2014. The Tenants paid a security deposit in the amount of \$600.00 at the beginning of the tenancy.

The Landlord acknowledged that she received the Tenants' forwarding address on April 9, 2014. She acknowledged that she has not returned the security deposit to the Tenants. The Landlord has not filed a claim against the security deposit.

There was no Condition Inspection Report completed that complies with the requirements of the regulation, either at the beginning or the end of the tenancy. The Tenants did not give the Landlord permission to retain any of the security deposit.

Both parties were present on October 31, 2012, for a move-out condition inspection. The Tenant testified that the Landlord decided to keep some of the security deposit without her consent. The Tenant stated that she left the rental unit in reasonably clean condition, with the exception of the walls. She stated that the Landlord had told her not to worry about the walls because they were being painted for the new occupant. The Tenant stated that she did not agree that the Landlord could retain any of the security deposit.

Analysis

It is important to note that the Landlord wished to provide testimony and question the Tenants with respect to issues that were irrelevant to the Tenants' application. The Landlord was cautioned four times during the Hearing that the matter was convened to hear the Tenants' application and that I would not hear irrelevant testimony. Only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

A security deposit is held in a form of trust by the Landlord for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address, the Landlord has 15 days to either:

1. repay the security deposit in full; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if the Landlord does not comply with Section 38(1) of the Act, the Landlord **must** pay the Tenants double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit in the amount of **\$1,200.00**.

I explained to the parties that the Landlord retains the right to file an application for damages under Section 67 of the Act, if she so desires. The Landlord left the teleconference before it had concluded.

The Tenants' application had merit and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$1,250.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced 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: September 30, 2014

Residential Tenancy Branch

