



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 30, 2014, by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

The Tenants testified that they served the Landlord with copies of their application and hearing documents, by registered mail on May 1, 2014. Canada Post receipts were provided in the Tenants' evidence. Based on the submissions of the Tenants I find the Landlord was deemed served notice of this proceeding on May 06, 2014, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the absence of the Landlord.

The hearing was conducted via teleconference and was attended by both Tenants who provided affirmed testimony.

Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

The Tenants affirmed the parties entered into a verbal month to month tenancy agreement that was scheduled to begin March 1, 2014. The Tenants paid a security deposit of \$380.00 near the end of February 2014. The tenancy never commenced as the Tenants did not move into the rental unit.

The Tenants testified that they have attempted on several occasions to have the Landlord return their security deposit but he keeps avoiding their requests. On approximately April 14, 2014 they sent the Landlord a letter, with their forwarding address and requesting their security deposit be returned to them, as per the copy they

provided in their evidence. They stated that they sent this letter by fax to the Landlord's company, and delivered another copy of the letter to one of the Landlord's coworkers who agreed to give it to the Landlord. The Tenants submitted that the Landlord continues to avoid them so they are now seeking the return of double their deposit.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenants and corroborated by their documentary evidence.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended on or before March 1, 2014, and the Landlord is deemed to have received the Tenant's forwarding address on April 17, 2014, three days after it was faxed to his office, pursuant to section 90 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than May 2, 2014. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the Landlord must pay the Tenants double the security deposit.

Based on the aforementioned I find the Tenants have met the burden of proof to establish their claim and I award them double their security deposit plus interest in the amount of **\$760.00** (2 x \$380.00 + \$0.00 interest).

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$810.00** (\$760.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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 02, 2014

Residential Tenancy Branch

