



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEDGEWOOD MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on November 17, 2014, to obtain a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee for their application.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each party gave affirmed testimony and confirmed receipt of evidence served by the Tenants.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

The undisputed evidence was that the Tenants entered into a one year fixed term tenancy that began in approximately May 2012. Initially rent of \$1,125.00 was due on or before the first of each month and was later increased to approximately \$1,130.00 per month. On or before May 2012 the Tenants paid \$562.50 as the security deposit. On September 30, 2014 the Tenants provided the Landlord with notice to end their tenancy effective October 31, 2014.

The Tenants testified that they vacated the property prior to the end of October 2014 and attended the move out inspection on October 22, 2014, which is the date they returned the keys to the Landlord and provided the Landlord with their forwarding address. They did not receive their security deposit refund within the 15 days so they filed their application for dispute resolution on November 17, 2014.

The Tenants submitted documentary evidence which included a copy of an envelope that was posted marked November 21, 2014 which had their security deposit refund inside. They stated that they did not receive the envelope until November 24, 2014; therefore, they are still seeking the return of double the deposit amount. They confirmed that they have since cashed the initial refund cheque of \$562.50 and it did clear their bank.

The Landlord testified that the Tenants' evidence was accurate. He stated that the only thing he could add was that he placed the envelope in the mailbox on November 17, 2014; so he did not know why it was not post marked until November 21, 2014.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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*.

Section 44(1)(a)(i) of the *Act* stipulates that a tenancy ends if a tenant gives notice to end the tenancy in accordance with section 45 or 44(1)(d) the tenancy ends when the tenant vacates or abandons the rental unit; whichever is the earlier of the two.

In this case the effective date of the Tenants' notice was October 31, 2014, and the vacated the unit, returning the keys and possession of the unit back to the Landlord on October 22, 2014. Therefore, I find this tenancy ended October 22, 2014, pursuant to section 44(1)(d) 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.

The tenancy ended October 22, 2014, as noted above, and the Landlord received the Tenants' forwarding address on October 22, 2014. Therefore, the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than November 6, 2014.

In this case, the post mark on the envelope which included the security deposit refund was November 21, 2014, and it was not received by the Tenants until November 24, 2014, 18 days after the required time frame.

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 tenant double the security deposit.

Based on the above, I find that the Tenants have succeeded in proving the merits of their claim, and I award them double their security deposit plus interest. The Tenants have already received and cashed the initial refund of \$562.50 + \$0.00 interest; therefore, their monetary award here will be for the balance owed of **\$562.50**.

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

Conclusion

The Tenants have been awarded a Monetary Order for **\$612.50** (\$562.50 + \$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: January 20, 2015

Residential Tenancy Branch

