



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlords, the interest payable and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has there been a breach of section 38 of the Act by the Landlords?

Background and Evidence

This tenancy began in March of 2003. The parties agreed that the Tenants paid the Landlords a security deposit of \$575.00 on or about March 1, 2003, and that the Tenants vacated the premises on November 30, 2014.

The Tenants provided the Landlords with a written notice of the forwarding address to return the security deposit to, and the Landlords agreed they received this in or about October of 2014. In evidence the Tenants provided a copy of the letter with their forwarding address set out. The Tenants did not sign over a portion of the security deposit.

The Tenants testified that the Landlords did not perform a written incoming or outgoing condition inspection report.

The Landlords claimed the Tenants had left the rental unit unclean or damaged. They testified that they had expected to do a walkthrough with the Tenants when they moved out, but had a friend attend the rental unit to obtain the keys. The Landlords testified they live in a different province.

The Landlords testified that the whole rental was, “pretty casual”. They testified that at the outset of the tenancy they told the Tenants they could have a dog. The Landlords testified about two years into the tenancy they noticed the Tenants had a cat and they entered into a verbal agreement that the Tenants were not allowed to have a cat.

The Landlords alleged that at the end of the tenancy there was a, “...substantial amount of damage”, although the Landlords agreed they did not file an application to claim against the Tenants for this alleged damage.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38.

In any event, by failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlords extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by all the laws pertaining to Residential Tenancies in British Columbia.

Therefore, I find the Landlords have breached section 38 of the Act.

The security deposit is held in trust for the Tenants by the Landlords. At no time do the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlords and the Tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlords must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlords feel they are entitled to keep the deposit, based on unproven claims.

The Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of

the Tenants. Here the Landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$1,220.34**, comprised of double the security deposit ($2 \times \$575.00 = \$1,150.00$), the interest on the original deposit of \$20.34, and the \$50.00 fee for filing this Application.

Conclusion

The Landlords are in breach of the Act, by failing to deal with the security deposit in accordance with the Act.

The Tenants are given a formal Monetary Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as 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: March 25, 2015

Residential Tenancy Branch

