



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenants' Application for a monetary order for double the security deposit and to recover the cost of the filing fee from the Landlord.

The Tenant CN gave affirmed testimony at the Hearing.

CN testified that he mailed copies of the Notice of Hearing documents and the Tenants' documentary evidence, by registered mail, to the Landlord on October 10, 2014. The Tenants provided copies of the registered mail receipt and tracking numbers in evidence.

Based on CN's affirmed testimony, I am satisfied that the Landlord was served with the Notice of Hearing documents. Service in this manner is deemed to be effected 5 days after mailing the documents, in this case October 15, 2014. Despite being deemed served, the Landlord did not sign into the teleconference and the Hearing proceeded in his absence.

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

CN gave the following testimony:

This tenancy ended on August 31, 2014. The Tenants paid a security deposit in the amount of \$2,000.00 on October 7, 2013.

There was no move-out Condition Inspection Report completed at the end of the tenancy. CN stated that the Tenants did not agree that the Landlord could retain any of the security deposit, but that the Landlord deducted \$1,436.00 from the security deposit

and provided the Tenants with a cheque dated September 11, 2014, in the amount of \$564.00. CN testified that the Landlord sent the Tenants another cheque shortly afterwards in the amount of \$11.00, representing interest earned on the security deposit. The Tenants have not cashed either of the cheques.

CN testified that the Tenants provided the Landlord and the Landlord's agent with their forwarding address by registered mail sent September 16, 2014. The Tenants provided copies of the registered mail receipts and tracking numbers in evidence.

Analysis

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 in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. I find that the Landlord was deemed to receive the Tenants' forwarding address on September 21, 2014. I accept CN's undisputed testimony that the Landlord did not return all of the security deposit within 15 days of receipt of the Tenants' forwarding address. The Landlord has not filed an Application for Dispute Resolution against the security deposit. Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the security deposit in the amount of **\$4,000.00**.

No interest has accrued on the security deposit pursuant to the provisions of the regulations.

The Tenants have been successful in their Application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlord retains the right to file an application for damages under Section 67 of the Act, if he so desires.

I Order the Tenants to return the two cheques that they received from the Landlord, uncashed, forthwith.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$4,050.00** 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: May 14, 2015

Residential Tenancy Branch

