



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF; O

Introduction

The Applicant is applying for return of the security deposit; recovery of the cost of the filing fee from the Respondent; and “other” orders.

The Tenants gave affirmed testimony at the Hearing. The Landlord did not sign into the teleconference, which remained open for 30 minutes.

The Tenants testified that they determined the Landlord’s full name and address from a request made under the Freedom of Information and Protection of Privacy Act. They testified that they served the Landlord with the Notice of Hearing documents by registered mail, sent on November 15, 2014. The Tenants provided a copy of the receipt and tracking numbers in evidence. A search of the Canada Post tracking system indicates that the registered documents were delivered on November 20, 2014.

Based on the Tenants’ affirmed testimony and the documentary evidence provided, I find that the Landlord was duly served under the provisions of Section 89 of the Act. The Hearing continued in the Landlord’s absence.

Preliminary Matter

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 of what relief they are seeking in the “Details of Dispute Resolution” section. No details were provided. Therefore this portion of the Tenants’ application is dismissed.

Issue to be Decided

Are the Tenants entitled to a monetary award pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant IT gave the following testimony:

- The Tenants met with the Landlord to discuss entering into a tenancy agreement. The tenancy was to begin on November 1, 2014. The parties agreed that monthly rent was \$900.00, due on the 1st day of every month.
- The rental unit required repairs, but the Landlord assured them that the repairs would be completed before they moved in. There was no tenancy agreement signed and “no talk of \$450.00 for a security deposit”, but the Landlord asked for a \$250.00 deposit for “good will”. The Tenants gave the Landlord \$250.00 on October 22, 2014.
- IT chopped firewood, fixed the back door and did some other work at the rental property on October 22, 2014. On or about October 25, 2014, the Tenants went to the rental property to check on how the repairs were going and were surprised and dismayed to see that no more repairs had been done. The Tenants also saw pot plants at the rental property.
- The Tenants have a young son and could not wait any longer, so they got another place for November 1, 2014.
- The Tenants drove to the Landlord’s house and hand delivered their forwarding address to the Landlord’s spouse. They also gave the Landlord a “request letter” asking for return of their \$250.00.
- The Tenants have not received any of the money back.

Analysis

Based on IT’s undisputed affirmed testimony, I find that the Landlord received the Tenant’s forwarding address in writing on or about October 25, 2014.

The Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

I find that the parties entered into an oral tenancy agreement.

Section 5 of the Act provides that parties may not contract outside of the Act and that any attempt to do so is of no effect.

Section 15 of the Act provides:

Application and processing fees prohibited

- 15** A landlord must not charge a person anything for
- (a) accepting an application for a tenancy,
 - (b) processing the application,
 - (c) investigating the applicant's suitability as a tenant, or
 - (d) accepting the person as a tenant.

Section 17 of the Act provides:

Landlord may require security deposit

- 17** A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

I find that the \$250.00 paid to the Landlord was a security deposit.

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep the security deposit.

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.

I find that the Landlord did not have a right under the Act to retain any of the Tenants' security deposit. I find that the Landlord did not file an application for dispute resolution against the security deposit, or return the full amount of the security deposit within 15 days of receipt of the Tenants' forwarding address in writing.

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.

Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the security deposit, **\$500.00**.

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 **\$550.00** 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: June 22, 2015

Residential Tenancy Branch

