



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking return of the security deposit recovery of the cost of the filing fee from the Landlords.

The Tenant NH gave affirmed testimony at the Hearing.

The Tenant testified that she mailed a copy of the Notice of Hearing documents to each of the Landlords, by registered mail, sent November 19, 2014. The Tenant stated that she sent the copies to the Landlord FT's current address, which is the rental unit. The Tenant stated that the Landlord FT moved into the rental property at the end of the tenancy, but that the Landlord NT moved to the United States. The Tenant NH provided the tracking numbers for the registered documents. A search of the Canada Post website indicates that both packages were picked up on November 20, 2014.

Based on the Tenant's testimony, I am satisfied that the Landlord FT was duly served with the Notice of Hearing documents. However, I find that there is insufficient evidence that the Landlord NT received the Notice of Hearing documents because the Landlord NT no longer lives with the Landlord FT. Therefore, the Tenants' application against the Landlord NT is dismissed.

This matter was scheduled to be heard at 3:00 p.m. on June 30, 2015. The teleconference remained open for 25 minutes, but the Landlord FT did not sign into the conference. The matter continued in his absence. It will be up to the Landlords to apportion between themselves any monetary award that may be provided to the Tenants.

The Tenants' application was amended to reflect the correct spelling of the Landlord FT's name, as shown on the tenancy agreement.

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 NH gave the following testimony:

A copy of the tenancy agreement was provided in evidence. The tenancy began on September 1, 2012, and ended September 30, 2014. Monthly rent was due on the 1st day of every month. The Tenants paid a security deposit in the amount of \$925.00 and a pet damage deposit in the amount of \$185.00 on August 1, 2012.

NH testified that the Landlords did not require a condition inspection at the beginning or the end of the tenancy.

NH testified that the Tenants did not give the Landlords permission to retain any of the security deposit or the pet damage deposit at the end of the tenancy. She stated that the Tenants provided the Landlords with their forwarding address, in writing, by registered mail sent October 8, 2014. The Tenants provided a copy of the letter dated October 8, 2014, and a copy of the registered mail receipt in evidence. NH stated that the Landlords have not returned any of the security or pet damage deposits.

Analysis

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.

The Act requires a tenant to provide a forwarding address in writing within one year of the end of the tenancy date in order to be entitled to return of the security deposit. Based on the Tenants' evidence, I am satisfied that the Landlord FT was duly served with the Tenant's forwarding address. Service by registered mail is deemed to be received 5 days after mailing the document.

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 and pet damage deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the deposits.

Based on the Tenant's affirmed testimony, I am satisfied that the Landlord FT did not comply with Section 38(1) of the Act. The Landlord FT did not file an application for dispute resolution against the deposits, or return the full amount of the deposits 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 deposits.

Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the deposits in the total amount of **\$2,220.00** (\$925.00 + \$185.00 x 2).

The Tenants' Application had merits and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord FT.

Conclusion

The Tenants' application against the Landlord NT is **dismissed without leave to reapply**.

I hereby grant the Tenants a Monetary Order in the amount of **\$2,270.00** for service upon the Landlord FT. 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: July 09, 2015

Residential Tenancy Branch

