



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 Dispute Resolution seeking return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and recovery of the filing fee from the Landlord.

It is important to note that the Landlord had made a written request for an adjournment, because he was flying from London to Dubai and expecting to land shortly before the Hearing. The Landlord was concerned that the flight might be late and that he would miss the Hearing. Nonetheless, the Landlord signed into the Hearing and stated that he was ready to proceed even though he did not have his documents with him.

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.

It was determined that the Tenants served the Landlord with the Notice of Hearing documents by registered mail sent on December 16, 2015. It was also determined that the parties exchanged their documentary evidence. I described the contents of each party's documentary evidence and the other party acknowledged receipt of the documents described.

Issue to be Decided

Are the Tenants entitled to a monetary award pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The tenancy began on January 1, 2013 and ended on February 28, 2014. Monthly rent was \$2,350.00, due on the 1st day of every month. The Tenants paid a security deposit in the amount of \$1,150.00 at the beginning of the tenancy.

The Tenants testified that they did not give the Landlord permission to retain any of their security deposit at the end of the tenancy. They stated that they provided their forwarding address in writing on a Condition Inspection Report on February 27, 2014. The Tenants testified that they took a photograph of the Condition Inspection Report, which they provided in evidence. They stated that the Landlord did not provide them with a copy of the Report.

The Tenants also provided copies of e-mails between the parties with respect to return of the security deposit.

The Landlord responded that the Tenants did not give written notice to end the tenancy and that they did not provide their forwarding address in writing. He stated that he could not be certain that the address on the Condition Inspection Report was their residence and that he believes they may be either in the United States or Spain. The Landlord stated that he tried to meet with the Tenants on a number of occasions to return their security deposit, but that the Tenants refused to meet with him.

The Tenants reiterated that the Landlord had their forwarding address and that he did not return the security deposit within the required time frame.

The Tenants provided a new address for service at the Hearing.

Analysis

The Landlord submitted that the Tenants did not provide their notice to end the tenancy in writing; however, this is the Tenants' Application for return of the security deposit and therefore his submission is irrelevant. The Landlord has not filed an Application for Dispute Resolution claiming against the security deposit. He is still at liberty to claim for damages under Section 67 of the Act, if he so chooses.

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 any or all of the security deposit, or when or how to return it.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit. It does not require the forwarding address to be the tenant's residential address.

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 ($\$1,150.00 \times 2 = \$2,300.00$).

The Tenants also sought to recover their mailing and printing costs; however the Act does not provide for costs related to preparing for a Hearing, other than recovery of the filing fee. This portion of their Application is dismissed.

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.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$2,350.00** 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: July 24, 2015

Residential Tenancy Branch

