



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

The Applicants are applying for return of the security deposit and pet damage deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and recovery of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord was served with the Notice of Hearing documents by registered mail sent November 26, 2014. It was also determined that the parties exchanged their documentary evidence.

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

Both parties provided a considerable amount of documentary evidence. I have reviewed all evidence and testimony; however, I refer to only the relevant facts and issues in this decision.

A copy of pages 1, 2 and 6 of the tenancy agreement were provided in evidence. The tenancy began in February, 2014. Monthly rent was \$887.50, due on the 1st day of each month. The parties agreed that the Tenants paid a security deposit and pet damage deposit in the total amount of \$887.50. The tenancy ended on July 31, 2014.

The Tenant EP testified that he did not give the Landlord permission to retain any of the Tenants' deposits at the end of the tenancy. The Tenant stated that he gave the Landlord his forwarding address on July 31, 2014. He stated that he picked up a partial

refund for the deposits from the Landlord on August 28, 2014, in the amount of \$800.00. EP testified that he sent the Landlord his forwarding address again, in writing, by registered mail. He stated that the registered letter was delivered to the Landlord on September 4, 2014. The Tenants provided a copy of the Canada Post delivery information in evidence. EP stated that the Landlord did not return the balance of the deposits, in the amount of \$87.50, to the Tenants within 15 days of receipt of their forwarding address.

The Landlord testified that she was sick and in hospital for two weeks at the end of the tenancy and didn't have the cash to give to the Tenants. The Landlord testified that she called EP when she got out of the hospital and told him she was keeping \$87.50 of the deposits.

The Landlord denied receiving the Tenants' forwarding address on July 31, 2014, but acknowledged receipt by registered mail on September 4, 2014.

EP stated that the Tenants usually dealt with the Landlord's agent during the tenancy and that the Landlord's agent could have returned the deposits in full to the Tenants.

Analysis

A security deposit and a pet damage deposit are 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 or pet damage deposit.

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 a security deposit or pet damage 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 or pet damage 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.

I accept that the Landlord returned a portion of the deposits to the Tenants; however, I find that the Landlord did not have a right under the Act to retain any of the Tenants' deposits.

The Landlord stated that she believes that the Tenants owe money for cleaning the rental unit; however the Landlord did not file an application for dispute resolution against the deposits, nor did she 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, less the amount the Landlord returned on August 28, 2014 ($\$887.50 \times 2 - \$800.00 = \mathbf{\$975.00}$).

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 she so desires.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$1,025.00** 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 23, 2015

Residential Tenancy Branch

