



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Community Builders Benevolence Group & #0955802 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant; her advocate; and the landlord's agent.

During the hearing the tenant provided testimony that she had paid to the landlord a new security deposit for their current rental unit but had provided no proof of such payment. I allowed the tenant until the end of business November 2, 2015 to submit evidence of such a payment that would include a print out from her income assistance file confirming the payment.

At the time of writing this decision the tenants had not submitted any additional evidence.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in January 2012 as a month to month tenancy for the monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 paid. The parties also agreed that the tenancy ended in January 2015.

The parties agreed the tenants had provided their forwarding address to the landlord by email on April 16, 2015. The tenants submitted into evidence a copy of this email sent from a third party to the landlord's agent and the landlord's agent's response dated April 17, 2015.

The parties also agreed the tenants moved into another rental property that is run by the same landlord group. The landlord submitted that it is their practice that when a tenant moves from one rental property to another that they run they will automatically transfer the security deposit to cover a security deposit for the new rental unit.

In this case the landlord confirms that this took place and that the tenants were never asked for a security deposit for the new rental property. The tenant testified that her income assistance worker had issued a cheque to the landlord for a security deposit for the new rental, no evidence of this was submitted by the tenants.

Analysis

Despite allowing the tenant time to submit additional evidence to confirm whether or not they had paid a new security deposit to the landlords I find that whether or not the tenants did pay a new one it has no bearing on whether the landlord had authority under the *Act* to transfer a security deposit from one tenancy to another.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any mutually agreed upon (in writing) amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While I accept the landlords have a practice of transferring security deposits from one tenancy to another, Section 38(4) the *Act* specifically requires that the landlord obtain written permission from the tenants to retain the deposit for that tenancy for any liability or obligation of the tenants.

There is no provision under the *Act* that allows the landlord to withhold a security deposit from one tenancy and apply it to another tenancy. As such, and in the absence of any written agreement between the parties that the landlord fulfilled their obligations in regard to returning the original deposit and then accepting it as payment for the new security deposit, I find the landlord has failed to comply with the requirements under Section 38(1).

As the tenancy ended in January 2015 and the landlord received the tenants' forwarding address by email on or before April 17, 2015, I find the landlord had until May 2, 2015 to return the deposits or enter into an agreement with the tenants for its disposition. As the landlord has not done so I find the landlord has failed to comply with their obligations under Section 38(1) and the tenants are entitled to double the amount of the deposit pursuant to Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$750.00** comprised of double the amount of the security deposit.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: November 3, 2015

Residential Tenancy Branch

