



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested a monetary Order for return of the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. The hearing process was explained and the parties were able to ask questions about the process.

Preliminary Matters

The tenants could not recall when they mailed the hearing documents to the landlord. The tenants said they think they used regular mail delivery.

The landlord confirmed receipt of the hearing documents on March 30, 2016. On April 5, 2016 the landlord submitted 16 pages of evidence to the Residential Tenancy Branch (RTB). The tenants confirmed receipt of that evidence at least two weeks prior to the hearing.

The tenants confirmed that they had not supplied any written submissions to the RTB. I explained that the only claim before me was for return of the deposit. The total claim made by the tenants was in the sum of \$975.00.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit paid?

Background and Evidence

The parties agreed that the tenancy commenced in March 2014. A security deposit in the sum of \$325.00 was paid. A move-in condition inspection report was completed and

the tenants were given a copy. The landlord submitted a copy of some terms and conditions of the tenancy.

There was no dispute that the tenancy ended effective September 30, 2015. The parties met several days prior to the end of September 2015 and walked through the rental unit together. A condition inspection report was not completed or signed by the parties. The landlord wanted to retain \$100.00 from the deposit and give the tenants a cheque for the balance. The tenants refused to agree to a deduction.

The landlord received the tenants' written forwarding address several days before the tenancy ended.

Later the landlord sent the tenants a cheque in the sum of \$225.00; the tenants returned that cheque to the landlord.

Toward the end of the hearing the landlord mentioned additional items claimed by the tenants. The landlord had received evidence setting out claims for return of rent and other items. These documents were not referred to at the start of the hearing when evidence submissions were reviewed. The tenants confirmed that they had given the landlord some written submissions but had not copied the tenancy branch with those documents.

I explained that we had reviewed the claim and service of documents at the start of the hearing, in order to establish the claim. As the tenants did not supply a calculation of the claim made, as required by section 2.1 of the Rules of Procedure I determined that I would decide the matter related to the deposit only. No other claim was before me.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the landlord received the tenants' written forwarding address by September 30, 2015.

I find, pursuant to section 44(f) of the Act that the tenancy ended on September 30, 2015.

The landlord completed a move-out condition inspection with the tenants but failed to complete the report. Section 35(3) requires the landlord to complete a report and to give a copy of that report to the tenants; in accordance with the Regulation. That did not occur.

Section 35(2)(c) of the Act determines that when a landlord fails to complete the inspection report and provide a copy to the tenant the landlords' right to claim against the deposit for damage is extinguished. Therefore, I find that the landlord extinguished the right to claim against the deposit and that the landlord had 15 days from September 30, 2015 to return the deposit, in full, to the tenants.

The tenants did not provide written permission at the end of the tenancy, as required by section 38(4) of the Act, allowing the landlord to make the deduction from the deposit.

Therefore, I find that the tenants are entitled to compensation in the sum of \$650.00; double the \$325.00 security deposit.

As the application has merit I find that the tenants are entitled to recover the \$50.00 filing fee from the landlord.

Based on these determinations I grant the tenants a monetary Order in the sum of \$700.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to return of double the security deposit.

The balance of the claim is dismissed.

The tenants are entitled to recover the \$50.00 filing fee cost from the landlord.

This decision is final and binding and 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: April 13, 2016

Residential Tenancy Branch