



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, OLC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for the return of the security deposit/pet damage deposit and an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that on December 07, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents.

On May 12, 2016 the Tenants submitted a copy of a mutual agreement to end the tenancy to the Residential Tenancy Branch. The Tenant stated that this evidence was faxed to the Landlord on May 12, 2016. The Landlord stated that she did not receive the document that was allegedly faxed to her on May 12, 2016; however she does not dispute that this tenancy ended on October 31, 2015.

As the parties do not dispute the end date of this tenancy I am satisfied that I can adjudicate this matter without physically viewing the mutual agreement to end tenancy that was submitted.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulate that a claim is limited to the issues identified on the Application for Dispute Resolution. These proceedings relate specifically to the Tenant's claim to recover the security deposit, which is the issue identified on the Tenants' Application for Dispute Resolution.

The parties were advised that I am unable to determine whether money is owed to the Landlord at these proceedings, as that is not an issue identified on an Application for Dispute Resolution that is before me. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation from the Tenants; however the Landlord was not permitted to address those issues during these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit and/or pet damage deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on February 27, 2015;
- a security deposit of \$475.00 was paid;
- a pet damage deposit of \$50.00 was paid
- the tenancy ended on October 31, 2015;
- the Tenant provided a forwarding address, via email, on October 13, 2015;
- the Tenant did not authorize the Landlord to retain any portion of the security/pet damage deposit;
- the Landlord returned \$175.00 of the security/pet damage deposit to the Tenant on November 10, 2015; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security/pet damage deposit.

The Landlord stated that she advised the Tenants of the reasons their full security/pet damage deposits was not being returned.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security/pet damage deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the double the security/pet damage deposit to the Tenants.

Conclusion:

The Tenants have established a monetary claim of \$1,050.00, which is double the security/pet damage deposit, which must be reduced by the \$175.00 the Landlord returned to the Tenants on November 10, 2015. I therefore grant the Tenants a monetary Order for \$875.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: June 02, 2016

Residential Tenancy Branch