



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 29, 2016 the Application for Dispute Resolution and the Notice of Hearing were mailed to the Landlords. The Agent for the Landlord stated that the Landlords received these documents and that she is acting as an agent for both Landlords.

On January 27, 2016 the Tenants submitted one page of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was previously given to the Landlord but was not served as evidence for these proceedings. The Agent for the Landlord stated that she is not in possession of this document. As the document was not served as evidence for these proceedings, it was not accepted as evidence for these proceedings.

On April 22, 2016 the Landlord submitted 11 pages of evidence and a USB device to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was emailed to Tenants sometime in April of 2016. The Tenant stated that this evidence was not received. As the Tenant did not acknowledge receipt of this evidence; the Landlord has submitted no evidence that this evidence was received by the Landlords, via email; and email is not a method of serving evidence that is permitted under section 88 of the *Residential Tenancy Act (Act)*, the Landlords' evidence was not accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Neither party was permitted to present evidence relating to the condition of the rental unit at the end of the tenancy, as that matter is not relevant to the issues in dispute at

these proceedings. The parties were advised that the Landlords have the right to file their own Application for Dispute Resolution seeking compensation for damage to the rental unit.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Agent for the Landlord and the Tenant agreed that:

- the tenancy began on July 29, 2012
- a security deposit of \$600.00 was paid;
- the Landlords did not complete a condition inspection report at the start of the tenancy, nor did they schedule a time to complete that report;
- the tenancy ended on December 31, 2015;
- the Tenants did not authorize the Landlords to retain any portion of the security deposit;
- the Landlords did not return any portion of the security deposit; and
- the Landlords did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that on January 04, 2016 they placed a letter in the mail box of the rental unit, in which they provided a forwarding address. The Agent for the Landlord stated that the Landlords located the forwarding address sometime during the week of January 09, 2016 to January 16, 2016.

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 Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security 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 Landlords did not comply with section 38(1) of the *Act*, I find that the Landlords must pay the Tenants double the security deposit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$1,300.00, which represents double the security deposit and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, 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: September 12, 2016

Residential Tenancy Branch