



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC; MNSD; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking an Order that the Landlord comply with the Act and return their security deposit; and to recover the cost of the filing fee from the Landlord.

Both parties signed into the teleconference and were provided the opportunity to give testimony and submissions with respect to the Tenants' Application. The parties gave affirmed testimony at the Hearing.

It was established that the Tenants mailed the Notice of Hearing documents to the Landlord on September 22, 2016, via registered mail. The Tenants provided the tracking number for the registered documents.

Both parties stated that they provided documentary evidence to the Residential Tenancy Branch; however, I could locate no such documents on the file or in the electronic filing system. I invited both parties to provide me with affirmed testimony with respect to the contents of the documents.

Issue(s) to be Decided

Did the Landlord comply with Section 38 of the Act? Are the Tenants entitled to compensation pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The parties agreed to the following facts:

- This tenancy began on March 1, 2015.
- The Tenants gave their notice to end the tenancy in writing on June 27, 2016, effective August 31, 2017. Including in the Tenants' notice was their forwarding address.
- The Landlord is holding the security deposit in the amount of \$750.00.

The Tenants testified that a condition inspection was performed at the beginning of the tenancy, but the Landlord did not provide them with a copy of the condition inspection report or a copy of

the tenancy agreement. The Landlord disputed this. He stated that he gave the Tenants a copy of the tenancy agreement on February 25, 2015, and that a copy of the condition inspection report was attached to the tenancy agreement.

The Tenants testified that they provided the Landlord with available dates for a move out condition inspection. They testified that they did so in a text message, to which the Landlord replied, "thank you". The Tenants stated that they advised the Landlord that they would be vacating the rental unit on August 20, 2016, and that they received a text from the Landlord acknowledging that he got their message. The Tenants testified that the Landlord sent them another text on August 21, 2016, saying that the rental property "looked good" and that he would return the security deposit.

The Landlord testified that, contrary to the Act, the Tenants had not cleaned the carpets; that they left food in the fridge; doors, walls and windows were not washed; the walls were damaged with numerous nail holes; 11 light bulbs were burned out and had to be replaced; and that he has a 3 page document from a witness with 16 other items the Tenants were responsible for but did not do.

The Landlord has not made his own Application with respect to damages.

The Tenants disputed that they caused damage to the rental unit.

Analysis

The Act contains comprehensive provisions on dealing with security deposits. Under Section 38 to the Act, the Landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Reproduced as written.]

Based on both parties' testimony, I find that the tenancy ended on August 31, 2016. Based on both parties' testimony, I find that the Landlord did not return the security deposit, or make a claim against it, within the time frame provided in Section 38(1) of the Act.

Therefore, I find the Landlord has breached Section 38(1) of the Act and that the Tenants are entitled to the compensation provided in Section 38(6) of the Act, equivalent to double the amount of the security deposit, in the amount of **\$1,500.00**.

The Tenants' Application had merit and I find that they are entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

The parties were advised that the Landlord retains the right to make a claim for damages under Section 67 of the Act, if he chooses to do so.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$1,600.00** for service upon the Landlord. This Order may be filed in the Provincial Court 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: March 21, 2017

Residential Tenancy Branch