



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

A hearing was convened on February 28, 2017 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.

At the initial hearing the female Tenant stated that on September 16, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 15 pages of evidence submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The hearing on February 28, 2017 was adjourned for reasons outlined in my interim decision of February 28, 2017. The hearing was reconvened on April 03, 2017 and was concluded on that date.

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

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Tenants and the Landlord agree that:

- the tenancy began on May 01, 2013;
- a security deposit of \$700.00 and a pet damage deposit of \$300.00 were paid;
- this tenancy ended on April 30, 2016;
- a condition inspection report was completed at the start of the tenancy;
- the initial condition inspection report was reviewed at the end of the tenancy but a formal final report was not signed by the parties;
- on April 30, 2016 the Agent for the Landlord was advised of the Tenants' forwarding address and she recorded it on the back of the condition inspection report;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;

- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit;
- on August 09, 2016 the Landlord sent the Tenants a cheque for \$318.97, which represented a partial return of their security deposit and pet damage deposit; and
- the \$318.97 cheque has not been cashed.

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 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 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.

I have not reduced the amount of the Tenants' award to reflect the \$318.97 cheque that was sent to the Tenants in August of 2016, as more than 6 months have passed since that cheque was issued and I find it unlikely that the cheque can still be cashed.

Conclusion:

The Tenants have established a monetary claim of \$2,100.00, which includes double the security deposit and pet damage deposit, plus \$100.00 as compensation for the cost of filing this Application for Dispute Resolution. I therefore grant the Tenants a monetary Order for \$2,100.00. In the event the Landlord does not voluntarily 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.

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: April 06, 2017