



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0754148 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security and pet damage deposits (the deposits) pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed that they had received copies of the tenants' original and amended dispute resolution hearing packages sent by the tenants by registered mail on November 1, 2016 and April 5, 2017, respectively. For this reason and in accordance with section 89 of the *Act*, I find that the landlords were duly served with these packages.

The parties confirmed that they had received one another's written evidence packages, although the corporate landlords' representative stated that they had not received the tenants' rebuttal evidence in sufficient time to fully examine some of the documents contained therein. As this appeared to have been an issue regarding the timely pickup of written evidence sent to the landlords at the mailing address they had provided to the tenants, I find that the written evidence was duly served in accordance with section 88 of the *Act*.

The tenants' amended application increased the amount of the monetary award they were seeking from their original claim for \$3,775.00 to \$4,775.00. This amount added

the value of a snowboard to their original claim. The tenants' claim properly before me is in the amount of the amended application for \$4,775.00.

At the beginning of the hearing, the parties confirmed that the landlords had served the tenants with the landlords' application for a monetary award under the RTB File Number identified on the initial page of this decision. The landlords' application was scheduled for a hearing before an arbitrator appointed under the *Act* for September 13, 2017.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for damages or losses arising out of this tenancy? Are the tenants entitled to a monetary award equivalent to double the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This periodic tenancy began on September 1, 2015. According to the terms of a written residential tenancy agreement signed by the parties on September 9, 2015, the monthly rent was set at \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$425.00 security deposit paid on September 1, 2015, and the tenants' \$212.50 pet damage deposit paid on September 30, 2015.

The tenants paid their full September 2016 rent at the beginning of that month. The tenants moved out of the rental unit by September 30, 2016, after a flood had caused extensive damage to the rental unit on September 15, 2016. The parties agreed that the tenants were in no way responsible for the flood of sewage water that backed up into their rental unit on September 15, 2016.

At the hearing, it became apparent that the landlords were unaware of a cheque that was apparently sent to them, perhaps to an incorrect address, from the tenants' insurance company in the amount of \$1,725.00. During the hearing, it became clear that the landlords' failure to receive this cheque was a significant factor in the dispute between the parties.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute arising from both this application and from the landlords' application scheduled for hearing on September 13, 2017:

1. The tenants agreed to contact their insurance company to advise them of the need to ensure that a cheque in the amount of \$1,725.00 is forwarded to the landlords' correct mailing address by their insurance company as soon as possible.
2. The landlords agreed to withdraw their application for a monetary award currently scheduled for a hearing on September 13, 2017.
3. The landlords committed to send the male tenant (Tenant DB) a negotiable cheque in the amount of \$2,100.00 within a week of the landlords' receipt of the \$1,725.00 cheque from the tenants' insurance company.
4. Both parties agreed that the settlement terms as outlined above constituted a final and binding resolution of all issues arising from both of their applications for dispute resolution and all issues arising out of this tenancy.

In coming to this settlement, both parties confirmed that they reached this agreement free of any force or coercion as a way to settle both of their applications before the Residential Tenancy Branch.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$2,100.00, to be used **only** in the event that the landlords do not abide by their commitment outlined as Condition #3 above. The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible after the landlords' failure to abide by the terms of Condition #3 of this settlement agreement. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

To give legal effect to this decision, the landlords' application cited on the first page of this decision and scheduled for a hearing on September 13, 2017, is hereby withdrawn.

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: May 05, 2017

Residential Tenancy Branch