

DECISION

Dispute Codes MNSD, MNDC

Introduction

This matter dealt with an application by the Tenants for the return of double the security deposit and for compensation for loss or damage under the Act, regulations and tenancy agreement.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 30, 2017. Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Preliminary Matters

At the start of the hearing the Landlord was made aware that her evidence package dated April 19, 2017 and received by the Residential Tenancy Branch and the Tenants on April 25, 2017 is late evidence. The male Tenant said he did not have time to respond to it and he felt some of the evidence is prejudicial against him. The Arbitrator asked the Landlord why the evidence was late and the Landlord said it was a mistake. The Arbitrator concurred with the Tenant and disallowed the Landlord's late evidence.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of double the security deposit?
2. Is there a loss or damage to the Tenants and are they entitled to compensation?

Background and Evidence

This tenancy started on June 15, 2014 as a fixed term tenancy for 12 months and then continued on a month to month basis. The tenancy ended on February 28, 2017 as a result of a Notice to End Tenancy issued by the Landlord. Rent was \$717.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$350.00 at the start of the tenancy.

The Tenants said they moved out of the rental unit on February 28, 2017 and gave the Landlord a forwarding address in writing on February 28, 2017. The Tenants said no move in condition inspection report was completed and signed. The Tenants continued to say they cleaned the unit as best as they could, but did leave some furniture in the unit. The Tenant said they did not agree that the Landlord could retain part or all of their security deposit. The Tenants continued to say the Landlords did not return any of their security deposit.

The Tenants said they are requesting double their security deposit of \$350.00 X 2 = \$700.00 as per section 38 of the Act.. The Tenants said their total claim is \$700.00.

The Landlord said the Tenants were evicted for smoking in the building. Further the Landlord said the Tenants left furniture and a mattress in the unit which cost the Landlord to haul to the dump. As well the Landlord said the unit was left dirty and because of the smoking the unit had to be painted. The Landlord said they retained the Tenants' security deposit without the Tenants' permission and the Landlord did not make an application with the Residential Tenancy Branch to retain the Tenants' security deposit. The Landlord said there were considerable costs to clean the unit so that they could rent it again.

Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I accept the Tenants' testimony that they gave the Landlord a forwarding address in writing on February 28, 2017. The Landlord did not repay the security deposit to the Tenants within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlord apply for dispute resolution by March 15, 2017. Consequently I find for the Tenants and grant an order for double the security deposit of \$350.00 in the amount of $\$350.00 \times 2 = \700.00 .

Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$700 to the Tenants. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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: May 1, 2017.

Residential Tenancy Branch