

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This matter dealt with an application by the Tenants for the return of double the security deposit, compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 28, 2016. 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 in the Landlords absence.

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?
3. Have the Landlords complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on July 1, 2015 as a fixed term tenancy for 12 months and then continued on a month to month basis. The tenancy ended in August, 2016. Rent was \$1,700.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$850.00 on July 1, 2015.

The Tenants said they moved out of the rental unit on approximately August 10, 2016 and gave the Landlord a forwarding address in writing on September 24, 2016. The Tenants said no move in or move out condition inspection reports were completed and signed. The Tenants continued to say they cleaned the unit so it was left in good condition and new tenants moved in September 1, 2016 so the Landlords did not lose any rent. 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 \$850.00 X 2 = \$1,700.00 as per section 38 of the Act and to be reimbursed for the filing fee of \$100.00. The Tenants said their total claim is \$1,800.00.

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 September 24, 2016. 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 October 14, 2016. Consequently I find for the Tenants and grant an order for double the security deposit of \$850.00 in the amount of $\$850.00 \times 2 = \$1,700.00$.

As the Tenants were successful in this matter I also order the Tenants to recover the filing fee of \$100.00 from the Landlord. Consequently, pursuant to section 67 a monetary order for \$1,800.00 has been issued to the Tenants. This Monetary order represents double the security deposit in the amount of \$1,700.00 plus the \$100.00 filing fee.

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 \$1,800.00 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