



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACSEM HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 9, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and pet damage deposit;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 2, 2019 as a teleconference hearing. C.W. appeared on behalf of the Tenants and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that C.W. and I were the only persons who had called into this teleconference.

C.W. testified the Application and documentary evidence package was served to the Landlord by registered mail on January 10, 2019. C.W. provided the tracking information in support. Based on the oral and written submissions of the Tenants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on January 15, 2019, the fifth day after the registered mailing. The Landlord did not submit documentary evidence in response to the Application.

C.W. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of their security and pet deposit, pursuant to Section 38 of the *Act*?
2. Are the Tenants entitled to monetary compensation, pursuant to Section 67 of the *Act*?
3. Are the Tenants entitled to the return of their filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

C.W. testified that the tenancy began on June 1, 2017 and that rent in the amount of \$1,300.00 was due to the Landlord on the first day of each month. C.W. stated that the Tenants paid a security deposit in the amount of \$650.00 as well as a pet deposit in the amount of \$650.00. C.W. stated that the Landlord continues to hold a total of \$1,300.00 in deposits. C.W. testified that he provided the Landlord with the Tenants' forwarding address in writing by placing it in the Landlord's mail box on December 3, 2018, before the tenancy ended on December 13, 2018.

C.W. stated that the Landlord served the Tenants with a Four Month Notice to End Tenancy on October 18, 2018 as the Landlord intended on demolishing the home. After receiving the Four Month Notice, the Tenant found a new rental unit to move to and provided the Landlord with their 10 day written notice to end tenancy on December 3, 2018 with an effective vacancy date of December 13, 2018.

C.W. testified that the Tenants are seeking the return of \$161.43 which represents the remaining balance of rent owed back to the Tenants retroactively as the Tenants vacated the rental unit prior to the end of December 2018.

C.W. stated that the Tenants are also seeking the return of their security and pet deposits in the amount of \$1,300.00. C.W. stated that he has requested the return of the deposits on several occasions; however, C.W. stated that the Tenants did not agree to any deductions and the Landlord has not yet returned any amount to the Tenants.

If successful, the Tenants are also seeking the return of the filing fee paid to make the Application.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

Section 50 of the *Act* states that if a Landlord gives a Tenant notice to end a periodic tenancy under Section 49, the Tenant may end the tenancy early by giving the Landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the Landlord's notice, and paying the Landlord, on the date the Tenant's notice is given, the proportion of the rent due to the effective date of the Tenant's notice. If the Tenant paid rent before giving a notice, on receiving the Tenant's notice, the Landlord must refund any rent paid for a period after the effective date of the Tenant's notice.

C.W. testified that the Tenants provided their 10 Day Notice to end tenancy to the Landlord on December 3, 2018 with an effective vacancy date of December 13, 2018. The Tenants are seeking the return of \$161.43 which represents the remaining balance of rent owed back to the Tenants retroactively as the Tenants vacated the rental unit on December 13, 2018. Pursuant to Section 50 of the *Act*, I find that the Tenants have established an entitlement to the return of \$161.43.

Section 38(1) of the *Act* requires a Landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a Tenants' forwarding address in writing or the end of the tenancy, whichever is later. When a Landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that the Tenants are entitled to receive double the amount of the security and pet deposit.

In this case, the Tenants vacated the rental unit on December 13, 2018 and provided the Landlords with their forwarding address in writing on December 3, 2018.

I accept the C.W.'s undisputed testimony that the tenancy ended on December 13, 2018 after the Tenants vacated the rental unit. As there is no evidence before me that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the Act, that the Landlord had until December 28, 2018, to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the Act, I find the Tenants are entitled to an award of double the amount of the security and pet deposit paid to the Landlord, or \$2,600.00.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Tenants are entitled to a monetary order in the amount of \$2,861.43.

Conclusion

The Landlord breached Section 38 and 50 of the Act. The Tenants are granted a monetary order in the amount of \$2,861.43. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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 13, 2019

Residential Tenancy Branch