



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD

Introduction

This hearing dealt with an application from the tenants for the full return of their security deposit. As the filing fee was waived, the tenants' application for recovery of the filing fee is set aside. Both parties participated in the hearing and gave affirmed testimony.

Issue to be Decided

- Whether the tenants are entitled to the full return of their security deposit

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on January 1, 2009. Rent in the amount of \$800.00 was payable in advance on the first day of each month, and a security deposit of \$400.00 was collected on January 3, 2009.

The tenants failed to pay the full amount of rent due on February 1, 2009. Specifically, the tenants state they paid the landlord's girlfriend \$380.00 in cash on February 1, 2009, and informed her that the balance owed would shortly be forthcoming. The landlord asserts that his girlfriend denies receiving this payment from the tenants. At some point in the first half of February the landlord issued a 10 day notice to end tenancy for unpaid rent which is dated February 9, 2009. A copy of the notice was submitted into evidence. The parties presented conflicting testimony in relation to what conversations took place between them around this time. However, the parties agree that the tenants vacated the unit on or about February 10, 2009 and that the landlord reimbursed the tenants half of the original security deposit in the amount of \$200.00. As to their forwarding address, the tenants claim they provided it to the landlord in writing on the back of the 10 day

notice. During the hearing the parties exchanged what were mainly differing views on the nature of conversations and events giving rise to this dispute.

Analysis

Pursuant to section 63 of the Act, discussion between the parties during the hearing led to a resolution of the dispute. Specifically, it was agreed as follows:

- that the landlord will reimburse the tenants in the amount of **\$100.00**;
- there are two tenants, “BB” & “MC” and the landlord will make the above payment by way of cheque payable to tenant “BB”;
- that the landlord will mail the cheque FORTHWITH to the tenants’ current address, as provided during the conference call;
- that the landlord will post-date the cheque no later than **July 2, 2009**;
- that the above particulars comprise full and final settlement of all aspects of this dispute for both parties.

For the reference of the parties, section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. In particular, section 38(1) provides as follows:

38(1) 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.

Further, section 38(6) of the Act states:

38(6) 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.

Finally, section 63 of the Act speaks to **Opportunity to settle dispute**, and provides:

63(1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.

(2) If the parties settle their dispute during the dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

The full text of the Residential Tenancy Act, Fact Sheets, Residential Tenancy Policy Guidelines and more, can be accessed via the website: www.rto.gov.bc.ca/

Conclusion

Pursuant to the above agreement, I hereby grant the tenants a monetary order under section 67 of the Act for **\$100.00**. Should the landlord fail to comply with the above agreement, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: June 10, 2009

Dispute Resolution Officer