



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenants made a 144 page evidence submission, including 20 photographs; which was served to the landlord on the morning of this hearing. This late evidence was served to the Residential Tenancy Branch (RTB) on March 23, 2011. The Rules of Procedure require evidence submissions be made to the other party at least 5 days prior to the hearing. Further, the RTB must be served at least 5 days prior to the hearing and those days do not include the date of service, the day of the hearing, weekends or holidays.

As the evidence was not served as required, it was set aside.

Issue(s) to be Decided

Are the tenants entitled to return of the deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed to the following facts:

- A 1 year fixed-term tenancy commenced on May 1, 2010;
- Both applicants signed the tenancy agreement as co-tenants;
- A deposit in the sum of \$1,050.00 was paid at the start of the tenancy;
- The tenants vacated the rental unit on November 1, 2010 and the landlord received their written forwarding address on or about that date;
- That on November 18, 2010, each of the tenants received an electronic email money transfer from the landlord in the sum of \$255.00 each, which they rejected; and
- A move-in and move-out condition inspection was not completed.

The tenants did not agree in writing to any deduction from the deposit paid.

The landlord argued that the tenancy was a fixed-term, that the tenants breached the contract; therefore, the tenancy did not end when the landlord was provided possession of the unit.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there was no dispute related to damages before me.

A move-in condition inspection or move-out condition inspection was not completed as required by the Act.

The landlord confirmed that he did not return the amount of deposit paid at the start of the tenancy and that he did not have written permission at the end of the tenancy, allowing deductions to be made from the deposit.

I find, pursuant to section 44(d) that the tenancy ended when the tenants vacated the rental unit. The landlord had possession of the rental unit on November 1, 2010; the date the tenancy ended.

Even if I were to find that the tenancy ended on November 30, 2010; at no time did the landlord return the deposit paid, in the sum of \$1,050.00, or submit a claim against the deposit. I find that the landlord had the written forwarding address on or about November 1, 2010 and, in the absence of payment in full or a claim against the deposit by at least December 15, 2010; that the tenants are entitled, pursuant to section 38(6) of the Act; double the deposit paid.

I find, based on the testimony of the tenants and the absence of any evidence that payment was accepted by the tenants, that the tenants did not accept any return of any portion of the deposit. Even if the tenants had accepted the partial payment attempted on November 18, 2010; I would have found that they are entitled to return of double the total deposit paid at the start of the tenancy; less any partial payment accepted.

I find that the tenant's application has merit, and I find that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$2,150.00, which is comprised of double the \$1,050.00 deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$2,150.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced 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: March 30, 2011.

Residential Tenancy Branch