



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlords' alleged failure to return it as required by s. 38(1) of the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This fixed term tenancy started on February 1, 2011, expired on July 31, 2011 and continued on a month-to-month basis until February 15, 2012 when the Tenant moved out. Rent was \$1,800.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$900.00.

The Parties agree that at the request of the Landlords, the Tenant left the keys to the rental unit and a note containing his forwarding address in writing in the garage on the rental property at the end of the tenancy. The Parties also agree that the security deposit has not been returned to the Tenant. The Landlords claim that the Tenant's spouse gave them verbal authorization to keep the security deposit in partial payment of rent for February, 2012 which the Tenant denied. The Tenant said he spoke with one of the Landlords, S.K., on or about February 23, 2012 and was advised by him that he would return the security deposit once the other Landlord, K.D., was available to co-sign a cheque. The Tenant said a week later, S.K. changed his position and said he was keeping the security deposit to pay for ½ of the rent for February, 2012.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is

later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on February 15, 2012 and that the Tenant gave the Landlords his forwarding address in writing in a note that he left on the rental property that day (pursuant to the Landlords' instructions). The Landlords admitted that they received the Tenant's forwarding address in writing on February 16, 2012. Although the Landlords claimed that the Tenant's spouse gave them *verbal* authorization to keep the security deposit, this is not sufficient for the purposes of the Act which says that authorization must be in writing. Similarly, s. 21 of the Act says a Tenant may not use a security deposit to pay for rent without the **written consent** of the Landlord. As a result, I find that the Landlords did not have the Tenant's written authorization to keep the security deposit.

Consequently, ***the Landlords had until March 2, 2012 at the latest to either return the Tenant's security deposit or to file an application for dispute resolution to make a claim against it.*** I find that the Landlords did not have the Tenant's written authorization to keep the security deposit of \$900.00 and did not return it to the Tenant. I also find that the Landlords did not make an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit or \$1,800.00 to the Tenant. As the Tenant has been successful in this matter, I also find that he is entitled pursuant to s. 72(1) of the Act to recover from the Landlords the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$1,850.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 23, 2012.

Residential Tenancy Branch