



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenants' application for a monetary order for double the amount of the security deposit and pet damage deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The Tenants gave affirmed testimony at the Hearing.

The Tenants testified that the Notice of Hearing documents were sent to the Landlord via registered mail on March 6, 2012, to two addresses: the address of the rental unit; and the Landlord's residence which is also the address given for the Landlord on the tenancy agreement. The Tenants testified that both of the registered mail packages were returned to the Tenants "unclaimed".

The Tenants testified that they sent their forwarding address, in writing, to the Landlord at the rental unit and also his residence by regular mail on September 28, 2011. The Tenants testified that the letter sent to the rental unit was returned to them, but the letter sent to the Landlord's residential address was not returned to them. Therefore, they submit, the letter sent to the Landlord's residence was successfully delivered. A copy of the letter was provided in evidence.

Based on the affirmed testimony of the Tenants, I am satisfied that the Landlord was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act, by sending the documents by registered mail to the address where the Landlord resides. Service by mail is deemed to be effected 5 days after mailing the documents. The Hearing continued in the Landlord's absence.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the amount of the security deposit and pet damage deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenants gave the following affirmed testimony:

This tenancy began in June of 2010. At the beginning of the tenancy, the Tenants gave the Landlord a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$700.00. The Tenants provided a copy of a receipt dated June 17, 2010, in evidence. The Tenants testified that they also paid \$1,400.00 for “last month’s rent” and provided a copy of a receipt dated June 1, 2010, in evidence. The Tenants testified that they did not pay rent for the last month of the tenancy and that therefore the deposit for “last month’s rent” has been extinguished.

This tenancy ended on July 13, 2011. The Tenants testified that they did not agree that the Landlord could apply any of the security or pet damage deposit towards damages at the end of the tenancy. They testified that the Landlord has not returned any of the deposits and that there have been no Orders of the director that the Landlord may keep any of the deposits.

Analysis

Security deposits and pet damage deposits are held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I accept the Tenants’ testimony that they mailed their forwarding address to the Landlord on September 28, 2011, pursuant to the provisions of Section 88(c) of the Act. Therefore, I find that the Landlord received the Tenants’ forwarding address in writing on October 3, 2011. The Landlord did not return the deposits within 15 days of receipt of the Tenants’ forwarding address, nor did the Landlord file for dispute resolution against the deposits.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit and pet damage deposit.

Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the deposits, in the amount of **\$2,800.00**. No interest has accrued on the deposits.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenants a Monetary Order in the amount of **\$2,850.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 10, 2012.

Residential Tenancy Branch