



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Preliminary Issues

At the outset of this proceeding the Tenants confirmed they named the Landlord's Agent as respondent to this dispute. They submitted that although they did not name the corporation, they were a party to this dispute because the Agent is the general manager for the corporation. Based on the submissions of the Tenants, and in accordance with the definition of Landlord under the Act, I find that by naming the Agent as respondent, they were seeking a remedy against the corporation. Accordingly, I amended the style of cause of their application to include the corporate name of the Landlord and identified the General Manager as Agent, pursuant to section 64 of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of double their security deposit plus key fob deposit.

S.K. affirmed that he personally served the Landlord copies of their application for dispute resolution, notice of hearing documents, and their evidence on October 22, 2012 when he left the package with the building concierge. He advised that he stood by the concierge while he called the Agent to advise that the package had been served. The concierge confirmed that he was to forward the package to the Agent and he signed acknowledging receipt of the package. The Tenants confirmed that the concierge office managed some of the Landlord's business in the absence of the Agent. Based on the submissions of the Tenants I find the Landlord was sufficiently served notice of this proceeding and I continued in his absence.

Issue(s) to be Decided

Should the Tenants be awarded a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: their tenancy agreement; an October 2, 2012 letter providing their forwarding address which was sent registered mail to the Agent; registered mail tracking information; e-mails between the parties which lists the Agent's name, title and contact information; and copies of cashed cheques proving payment of the security deposit and key fob deposits.

The Tenants confirmed they entered into a fixed term tenancy agreement that began on August 1, 2011 and ended July 31, 2012. Rent was payable on the first of each month in the amount of \$4,500.00 and on July 26, 2011 they paid \$2,250.00 as the security deposit and on August 11, 2011 they paid \$150.00 as a deposit for two extra key fobs. No condition inspection reports were provided to the Tenants. The Tenants returned all of the key fobs to the Landlord at the end of the tenancy.

The Tenants submitted that despite their requests the Landlord refuses to return their deposits. As a result they are requesting return of double the deposits.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenants and corroborated by their documentary evidence.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended July 31, 2012 and the Tenants provided the Landlord with their forwarding address in writing on October 2, 2012 by registered mail. The Landlord is deemed to have received the forwarding address October 7, 2012, five days after it was mail, in accordance with section 90 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than October 22, 2012. They did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenants have met the burden of proof to establish their claim for return of double their security deposit in the amount of **\$4,500.00** (2 x \$2,250.00 + \$0.00 interest).

I accept the submissions from the Tenants that the key fobs were returned to the Landlord at the end of their tenancy. Therefore, I Order the Landlord to return the key fob deposit in the amount of **\$150.00**.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$4,650.00** (\$4,500.00 + \$150.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be 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*.

TEXT

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: January 18, 2013

Residential Tenancy Branch

