



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Tenants for the return of their security deposit and last month's rent paid in advance as well as to recover the filing fee for this proceeding.

The Tenants served the Landlord with the Application and Notice of Hearing by registered mail on May 22, 2009. According to the Canada Post online tracking system, a notification card was left for the Landlord on May 22, 2009 and on June 9, 2009, the Landlord refused service of the hearing package. I find that the Landlord was served as required by s. 89 of the Act and the hearing proceeded in his absence.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit?
2. Are the Tenants entitled to recover an overpayment of rent?

Background and Evidence

This fixed term tenancy started on March 14, 2008 and was to expire on March 13, 2008, however it ended on February 15, 2009 by written agreement of the Parties. Rent was \$850.00 per month. The Tenants pre-paid \$850.00 for their last month's rent and paid a security deposit of \$500.00 at the beginning of the tenancy.

The Tenants said they executed a tenancy agreement with the former owner of the rental property and in May of 2008, the Landlord purchased the rental property. The Tenants claim that the Landlord agreed to end the tenancy early because there was no water to the rental unit and the Landlord wanted to do renovations. According to the written agreement to end the tenancy dated January 1, 2009, the Landlord agreed not to charge rent for the period January 15 – February 15, 2009 and to return the Tenants' last month's rent payment.

The Tenants said they did not give the Landlord written authorization to keep the security deposit and gave him their forwarding address in writing on February 14, 2009.



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Analysis

Section 19 of the Act says that a Landlord may not accept more than $\frac{1}{2}$ of one month's rent as a security deposit and if he does, the Tenant is entitled to recover the overpayment. In requiring or accepting the Tenants' last month of rent in advance, I find that the Landlord contravened the Act and must return the overpayment of **\$850.00** to the Tenants.

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 Tenants' forwarding address in writing (whichever is later) to either return the Tenants' 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 Tenants' 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 to the Tenants.

I find that the Landlord received the Tenants' forwarding address in writing on February 14, 2009 and that the tenancy ended on February 15, 2009. I find that the Landlord did not return the Tenants' security deposit and did not make an application for dispute resolution to make a claim against the deposit. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit and as a result, pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit (**\$1,000.00**) to the Tenants with accrued interest of **\$6.00** (on the original amount). As the Tenants have been successful in this matter, I also find that they are entitled to recover their **\$50.00** filing fee for this proceeding.

Conclusion

A monetary order in the amount of **\$1,906.00** has been issued to the Tenants 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: September 01, 2009.

Dispute Resolution Officer