



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC,

Introduction

This was an application by the tenant for a monetary order for the return of the security deposit, including double the amount of the deposit. The hearing was conducted by conference call. The named persons attended on behalf of the landlord and the tenant

Issues(s) to be Decided

Is the tenant entitled to the return of her security deposit? Is she entitled to payment of double the amount of her deposit as well as bank charges?

Background and Evidence

The rental unit is an apartment in the landlord's apartment complex in Burnaby. The tenancy began approximately one and a half years ago. Monthly rent was \$1,000.00. The tenant paid a \$500.00 security deposit at the commencement of the tenancy.

G. R. Who was an occupant of the rental unit testified that at the end of March, 2010 he gave the landlord's resident manager verbal notice that the tenant would move out of the rental unit at the end of April, 2010. He testified that on March 31, 2010 he delivered a letter to the landlord notifying the landlord that the tenants would move out of the rental unit in 30 days. The tenants met with the manager in early April. They discussed cleaning with him and received a copy of the move-out inspection checklist. The manager discussed some cleaning services at a discounted rate.

The tenants moved out of the rental unit on April 30th. They arranged to meet the manager at 4:00 P.M./ to carry out an inspection.. The tenants waited until 6:00 P.M. but he failed to attend.

After moving out the tenants tried to contact the manager. They called and left messages for him on May 1st and May 3rd. The tenant received a call from the landlord on May 5. She met with the resident managers and returned the keys to them. The resident managers told her that the landlord was keeping the damage deposit and would be charging a further month's rent because she did not notify the landlord in writing that she was moving out. The tenant said that she told them both verbally and in writing that she was moving. The tenants testified that the landlord's representatives told them that there were two apartments numbered 308 in different building that were moving at the same time.

The tenant delivered a second letter to the landlord on May 13, 2010 wherein they provided their forwarding address. The tenant said that on May 14, 2010 she received a telephone call from the resident manager. He told the tenant that they did not need the letter because the landlord was keeping the deposit.

The tenant testified that the landlord attempted to negotiate the tenant's cheque for May rent. There were insufficient funds in the tenant's bank account and the cheque was returned marked "NSF.". The tenant was charge bank fees of \$32.00 for the returned cheque.

The landlord has filed an application for dispute resolution to claim a monetary order or to request an order to retain the tenant's security deposit.

Analysis

I accept the evidence from the tenant and from G.R. that they gave the landlord verbal and written notice that they would move out at the end of April, 2010. A accept their

testimony that the letter dated March 31, 2010 was delivered to the landlord's representative Mr. L on March 31, 2010. Mr. L denied receiving the letter, but I prefer the evidence of the tenants to that of Mr. L. Their evidence was corroborated by the written statement of J. F. who was with them when they delivered the letter on March 31st. It may be that Mr. L misplaced the letter or lost it, but I accept the tenant's evidence that it was delivered in preference to the testimony of the landlord's representatives.

Conclusion

The landlord's representatives appeared to have been confused by the fact that tenants from two apartments, each having the same suite number were moving out on the same day. The landlord's confusion does not amount to a legitimate excuse for failing to deal with the tenant's security deposit in accordance with the provisions of section 38 of the *Residential Tenancy Act*.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

The tenant's letter of March 31, 2010 contained the tenant's forwarding address as did the letter of May 13, 2010. I am satisfied that the tenant provided the landlord with her written forwarding address and that she served the landlord with documents notifying the landlord of this application as required by the legislation. After receiving the May 13th letter the landlord's representative stated that the landlord would not return the deposit. The security deposit was not refunded within 15 days as required by section

38; the landlord did not apply to retain the deposit and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her \$1,000.00, being double the amount of her original deposit. The landlord was not entitled to cash the tenant's cheque for May rent. I find that the tenant is entitled to recover bank service charges in the amount of \$32.00. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,082.00 and I grant the tenant a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.