



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a monetary order for a return of their security deposit and to recover the filing fee.

Tenant LH and the Landlord's Agents appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The evidence and testimony indicates this tenancy began on September 9, 2009, for a fixed term of one year; however the tenancy ended early, on July 15, 2010, when the Tenants gave notice. A security deposit of \$545.00 was paid at the time the tenancy began.

The Tenant's relevant testimony indicated that she was not present at the move out inspection, but was told by her husband, Tenant FY, that the Landlord was provided their forwarding address on July 15, 2010, on the move out inspection report.

The Tenant testified that she did not receive a return of the security deposit until August 27, 2010, and that the cheque was not the full amount. The Tenant testified that they did not receive the cheque until after her husband called approximately August 16 to inquire about the security deposit.

The Landlord supplied evidence including a copy of the condition inspection report, a copy of a cheque in the amount of \$315.00 dated July 26, 2010, a copy of the envelope addressed to Tenant FY to the address listed on the tenancy agreement, which was

returned by Canada Post, office notes and a copy of their bank statement indicating the cheque for \$315.00 cleared the bank on August 30, 2010.

The Landlord's Agent, TK, testified that Tenant FH provided the Tenants' forwarding address on July 15, 2010, on the move out inspection report. Additionally the Tenant authorized the Landlord on the inspection report to deduct \$230.00 from the security deposit for carpet cleaning, wall repair and liquidated damage for early end of the tenancy.

The Landlord's Agent testified that the cheque for \$315.00 was mailed to the address listed on the inspection report on July 26, 2010, but that the Landlord's office received the returned envelope on August 16, 2010. I note the envelope was returned by Canada Post indicating the addressee had moved or was unknown.

The Landlord's Agent testified that Tenant FY called the office on August 19, 2010, inquiring about the security deposit and it was during the phone conversation the Landlord's Agent, BL, was told that the original address was incomplete as the unit # was not listed by the Tenant.

The Landlord's Agent testified that the original cheque was then mailed to the Tenants directly thereafter, was received by the Tenants on August 27, and cleared the bank on August 30, 2010.

Upon query, the Tenant confirmed that the signature and handwriting authorizing the deductions and listing the forwarding address was that of her husband. Further upon query the Tenant acknowledged that the only written forwarding address provided to the Landlord was on the move out condition inspection report.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Landlords were required to return the Tenants' security deposit no later than July 30, 2010.

I find the Landlord submitted documentary evidence and gave affirmed testimony that they were authorized by the Tenants to deduct \$230.00 from the security deposit and that the remaining security deposit was mailed on July 26, 2010 to the address supplied by the Tenants.

I accept that after the Landlord discovered the address was incorrect on August 19, 2010, they mailed the original cheque to the corrected address shortly thereafter, which was received by the Tenants on August 27, and cleared the bank on August 30.

I therefore find that the Landlord was authorized to deduct \$230.00 from the security deposit, that the remaining security deposit was mailed within 15 days of receiving the Tenants' written forwarding address, mailed the remaining security deposit within 15 days of receiving a verbal, corrected forwarding address and has therefore complied with the Act.

I note the Tenants have yet to supply the Landlord with a correct *written* forwarding address.

Therefore I find that the Tenants failed steps one and two of the requirements to prove their loss or damage and I dismiss their Application in its entirety.

Conclusion

The Tenants' Application is dismissed in its entirety.

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: December 13, 2010.

Dispute Resolution Officer