



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for return of all or part of the pet damage deposit or security deposit.

Both tenants and the landlord attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence provided by the parties prior to the commencement of this hearing, and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this month-to-month tenancy began in October, 2008 and ended on October 31, 2010. Rent in the amount of \$875.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$425.00.

The male tenant testified that he tried a number of times to do a move-out condition inspection with the landlord, although a move-in condition inspection report was not completed when the tenants moved into the rental unit. The parties had agreed to complete the inspection at move-out on the last day of the tenancy, being October 31, 2010. He stated that they had agreed that when the tenants were finished cleaning and moving, he would call the landlord to let her know. He went to see the landlord at about 9:00 p.m. but the landlord stated that it was too late and that she would complete the inspection herself. The tenant was not comfortable with that, and the parties then arranged 8:30 a.m. the following day. The tenant arrived at 8:30 a.m. the following day,

however the landlord had already completed the inspection, and the tenant stated that he is not sure what she did.

The tenant further testified that on November 1, 2010 the landlord gave him a cheque for \$266.74 which was the amount agreed upon by the parties because the tenants owed utilities for the balance. The tenant noticed that the landlord had made the cheque payable to himself, and as a result of some financial difficulties, he was not able to cash the cheque. He stated that the female tenant had paid the security deposit and all the rent and the landlord did not receive any rent cheques from the male tenant. He sent an email to the landlord asking her to send another cheque payable to the female tenant, and that he would destroy the first cheque she had provided. The landlord responded by email on December 1, 2010 asking the tenant to alter the cheque and put her initials on it. The tenant contacted the bank and was told that if he altered the cheque he could be charged with an offence. The tenant again emailed the landlord on December 7, 2010, and the landlord responded that she was going on vacation and would not be able to deal with it until she returned on December 21, 2010. He also stated that the landlord also sent him prior emails, and stated that if the landlord had the time to send emails, she had the time to write another cheque before going on vacation.

The tenants had moved to another rental unit about 3 doors down, and advised the landlord of that. The tenant then provided the landlord with their forwarding address in writing by sending a note by regular mail to the landlord's address on December 22, 2010. The tenants apply for double return of the security deposit and recovery of the \$50.00 filing fee for the cost of this application, and stated that the landlord would not have dealt with it if the tenants hadn't filed for dispute resolution.

The tenant testified that he burned the original cheque between December 1 and December 7, 2010, and that the relationship between the parties had been a very trusting relationship, and he didn't believe that she would not trust that he had destroyed the cheque, but didn't tell her that until January 27, 2011 because by that time communication between the parties had broken down.

The landlord testified that she was waiting for the first cheque to be returned to her before replacing it with another cheque. She stated that on November 1, 2010 she wrote the cheque in front of the male tenant and he didn't tell her to make it payable to the other tenant. She stated that she had agreed to permit the tenant to change the cheque and put her initials on it. She requested the first cheque back from the tenant on December 7, 2010, and did not consider putting a stop payment on the first cheque because bank fees would be involved.

After the hearing concluded, the landlord faxed to me a letter further outlining her defence to the tenants' application. The Rules of Procedure require that any evidence that the parties intend to rely on must be received by the Residential Tenancy Branch at least 5 days prior to the hearing date, and must also be provided to the opposing party, unless otherwise ordered by me. I have no evidence that the landlord provided a copy of that letter to the tenants, and no permission was granted to the landlord to add evidence after the conclusion of the hearing. Therefore, the letter has not been considered in this Decision.

Analysis

The *Residential Tenancy Act* states that a landlord must return the security deposit or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenants provide their forwarding address in writing to the landlord. If the landlord fails to do either, the tenant is entitled to apply for double return of the security deposit or pet damage deposit, or both. In this case, I find that the landlord did return the security deposit to the tenants within the 15 days as provided for in the *Act*, and therefore, the tenants are not entitled to double recovery. The evidence before me is that the landlord was waiting for the cheque to be returned before replacing it, but it's clear in the evidence that communication had broken down and the landlord was not aware that the tenant destroyed that cheque until January 27, 2011. There is nothing in the *Act* requiring the landlord to put a stop payment on the first cheque, and I do not find that the landlord had any obligation to change who the cheque was payable to. However, it is clear in the evidence before me that the cheque has been destroyed, and I find that the tenants are entitled to recovery of the amount of \$266.74 from the landlord.

Further, I accept the evidence of the tenant that the landlord would not have dealt with replacing the cheque if the tenant hadn't applied for dispute resolution. Since the tenants have been successful with their application for return of the security deposit, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The *Act* also gives me the authority to make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, and to determine any matters related to the dispute that arise under the *Act* or the tenancy agreement. In this case, I find it prudent to order that the landlord provide payment of the monetary order to the female tenant, and I so order.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$316.74. I further order that the landlord pay that amount to the female tenant, or to either tenant if paid in cash. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: April 20, 2011.

Residential Tenancy Branch