



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

One of the tenants attended the conference call hearing, provided affirmed testimony and documentation as evidence in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution, evidence and notice of hearing documents, no one for the landlord company attended the conference call hearing. The tenant provided proof that the landlord was served by registered mail, and provided a receipt dated July 13, 2011 from Canada Post and a registered mail ticket, which I accept as evidence that the landlord has been served in accordance with Section 89 of the *Residential Tenancy Act*.

All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to recovery or double recovery of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on March 1, 2009 and ended on December 31, 2010; the tenants moved during the evening and into January 1, 2011. Rent in the amount of \$750.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On February 15, 2009 the landlord collected a security deposit from the tenants in the amount of \$375.00. No move-in or move-out condition inspection reports were completed.

The tenant further testified that upon speaking to the building manager, who was advised that the tenants would leave the keys to the rental unit and forwarding address in the building manager's mailbox, the building manager responded that it would be sent to the landlord. The tenants left a note containing the forwarding address and the keys in the mailbox before departing on January 1, 2011.

The tenants then wrote a letter to the landlord on January 22, 2011, a copy of which was provided in advance of the hearing, confirming the forwarding address and requesting return of the security deposit. On February 22, 2011 the tenants received a cheque dated February 9, 2011 for \$275.00 with no explanation of why the full amount was not received. A copy of the cheque was provided in advance of the hearing, and the amount of \$375.00 was written on the cheque and then it was changed in handwriting to read \$275.00.

The tenant also testified that the tenants did not authorize the landlord to keep any portion of the security deposit.

The tenants claim double the amount of the security deposit, less the \$275.00 received back from the landlord.

Analysis

The *Residential Tenancy Act* is clear with respect to the return of security deposits. Firstly, the landlord's right to claim against a security deposit for damages is extinguished if the landlord does not cause a move-in and a move-out condition inspection report to be completed in the presence of the tenants. Secondly, the landlord must return the security deposit in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to make an application for dispute resolution claiming against the security deposit, or fails to return the security deposit in full within that 15 day period, the landlord must pay the tenant double the amount of the security deposit.

I accept the evidence of the tenant that a note was left in the manager's mail box containing a forwarding address on January 1, 2011. I further accept the evidence that the tenants sent a second note to the landlord on January 22, 2011 which contained the forwarding address. The cheque sent to the tenants by the landlord is dated February 9, 2011, and I question why it would take 18 days to arrive from Vancouver to the Victoria area. Further, I find that the landlord did not return the full security deposit or claim against the security deposit within 15 days of the date the tenancy ended or the date the tenants provided a forwarding address in writing. Therefore, I find that the tenants are entitled to a monetary order in the amount of \$475.00, being double the

amount of the security deposit as provided in Section 38 of the *Act*, less the \$275.00 received by the tenants.

The tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$525.00. 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: October 12, 2011.

Residential Tenancy Branch