



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was an application by the tenants for a monetary order for the return of their security deposit including double the deposit amount. The hearing was conducted by conference call. The named tenant and the landlords participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit including double the amount?

Background and Evidence

The rental unit is a house on Vancouver Island. The tenancy began on January 1, 2011 for an 18 month fixed term. Monthly rent was \$1,500.00 payable on the first day of each month. The tenants paid a security deposit of \$750.00 on November 23, 2010. The parties conducted a move-in inspection on December 22, 2010, before the start of the tenancy.

The landlords wished to move into the rental property. They could not end the fixed term tenancy by giving a two month Notice to End Tenancy for landlords' use so they negotiated an end of tenancy with the tenants. The landlords agreed that the tenants would pay no rent for May and June and the tenancy would end by mutual agreement on June 30, 2011. The parties signed the mutual agreement to end tenancy on April 19, 2011. Later on May 25, 2011 the agreement was amended. The tenants agreed to move out on May 31, 2011 and the landlord paid the tenants the sum of \$2,100.00.

According to the landlord the tenants were to move out and have the house cleaned by May 30th. The landlord said that the parties agreed to communicate by e-mail regarding the move-out. The landlord testified that he sent an e-mail to the tenants suggesting two alternate times to conduct a condition inspection of the rental property. On May 30th he proposed a third time for an inspection, on May 31, 2011 at 9:00 A.M. The landlord did not receive a response to his proposals.

The landlord testified that the tenants caused significant damage to the rental property and did not maintain the grounds. The landlord's position is that the tenants have extinguished their right to the return of the security deposit by reason of their failure to participate in a condition inspection at the end of the tenancy.

The tenants said that they did not receive the landlord's e-mail communications because they were in process of moving and their home internet connection was not established until after the proposed times for inspection had passed. The landlords conducted an inspection in the absence of the tenants.

The landlord testified that the tenants chose to ignore his e-mails; they were sent to the tenants' business computer and some were sent before their home internet service was disconnected. He said that the tenants' first contact after moving out was on June 14th, 15 days after they moved out.

The tenants denied that they were given two opportunities for inspection. They sent an e-mail to the landlord on May 30, 2011, confirming that they had moved and requesting that the landlord mail the deposit cheque to the tenants' business address which was provided.

Analysis

Section 35 of the *Residential Tenancy Act* sets out requirements for condition inspections at the end of a tenancy. The section provides as follows:

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

The landlord's position is that he offered the tenants two opportunities for the inspection; they failed to participate and therefore their right to the return of the deposit has been extinguished pursuant to section 36 (1) of the *Act*. I do not agree with the landlord's position on this point. Section 35(2) states that the landlord must offer the tenant at least 2 opportunities, ***as prescribed***, for the inspection (emphasis added).

The prescriptions for offering opportunities for inspection are set out in section 17 of the Residential Tenancy Regulation. The section provides as follows:

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any

reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Whether or not the tenant received the landlord's e-mail proposals for inspection, I find that the tenants have not extinguished their right to the return of the security deposit because the landlord did not propose a second opportunity for inspection by giving the tenants a Notice of Final Opportunity to Schedule a Condition Inspection, which is the approved form required to be given by the regulation and available on the Residential Tenancy website.

The tenants provided the landlord with an address for the return of their security deposit. The tenants did not seek payment of double the amount of the security deposit as set out in section 38 of the *Residential Tenancy Act*. And requested only the return of the original deposit amount.

I grant the tenants' application and award them the sum of \$750.00, being the original deposit amount. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$800.00 and I grant the tenants a monetary order against the landlords in the said amount. This order may be registered in the Small Claims Court 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 03, 2011.

Residential Tenancy Branch