



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDS, RPP, FF

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as double compensation for a portion of the security deposit / an order instructing the landlord to return the tenant's personal property / and recovery of the filing fee. Both tenants attended the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package") the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail. The tenant testified that the landlord did not pick up the registered mail and that it was therefore returned to the tenant. The tenant further testified that the returned hearing package was then personally delivered to the landlord.

On November 29, 2011 the Residential Tenancy Branch received a handwritten letter from the landlord in which he responded to the tenant's application. However, the tenants testified that they did not receive a copy of the landlord's letter. In any event, the landlord's response serves to confirm his receipt of the tenant's hearing package.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from January 1, 2007 to December 31, 2007. Thereafter, tenancy continued on a month-to-month basis. Monthly rent began at \$1,200.00. A security deposit of \$600.00 was collected on December 20, 2006. The tenants testified that a move-in condition inspection report was not completed.

The tenants gave 60 days written notice of their intent to end the tenancy effective August 31, 2011. Monthly rent by this time was \$1,400.00. The tenants also testified

that all of their possessions were removed from the unit by that time, with the exception of a “bouncy castle” kept in a storage area for which the tenant does not have a key. While the landlord offered assurances that his son would give the tenant access in order to remove the item, no such arrangement was ever made and the bouncy castle remains in the landlord’s possession. A move-out condition inspection report was not completed.

At the end of tenancy, the landlord undertook to return the \$600.00 security deposit by way of 2 post dated cheques, each in the amount of \$300.00. The cheque dated on or about September 14, 2011 cleared, however, the bank refused to negotiate the cheque dated on or about September 21, 2011 as the landlord’s account had been closed. The tenants gave the landlord their forwarding address at the beginning of September 2011. The landlord was again informed of the tenant’s forwarding address by way of the tenant’s application for dispute resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that as the landlord has not returned the full security deposit, nor filed an application for dispute resolution within 15 days after being informed in writing of the tenant’s forwarding address, the tenant has established entitlement to a monetary order in the amount of \$668.24, which is calculated as follows:

\$600.00: *double the amount of the security deposit not yet repaid (2 x \$300.00);*

\$ 9.12: *interest calculated on \$300.00 repaid on or about September 14, 2011;*

\$ 9.12: *interest calculated on \$300.00 ordered now to be repaid;*

\$ 50.00: *filing fee*

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$668.24**, as calculated above. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

Pursuant to section 65 of the Act, I hereby ORDER the landlord to contact the tenant FORTHWITH, but in any event by no later than December 31, 2011, to arrange for the return of the tenant's personal property (the "bouncy castle"), by no later than January 7, 2012.

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 21, 2011.

Residential Tenancy Branch