



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 scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. The landlord received Notice of this hearing sent to him by registered mail on January 19, 2012; the tenant had a Canada Post tracking number, although the landlord stated the mail did not require a signature.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They presented affirmed oral testimony and make submissions during the hearing.

Preliminary Matters

The tenant called into the hearing using a computer system, over the internet. At times it was very difficult to hear the tenant and, toward the conclusion of the tenant an echo began on the line that made it very difficult to hear the tenant or for the tenant to hear the landlord and dispute resolution officer. However, up to this point, I was able to establish critical points that allowed me to make a decision.

The tenant also did not have a strong command of the English language and asked that I speak slowly; which I did in order to accommodate the tenant.

The tenant did not serve the landlord with his evidence package as the landlord. The tenant stated that some documents were provided to the landlord via email. As the evidence was not given to the landlord as provide by Act, in the same form as that provided to the Residential Tenancy Branch, I set aside the evidence submission. The tenant was at liberty to make oral submissions.

Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

The parties agreed that this was a 1 year fixed-term tenancy that commenced on November 1, 2011; rent was \$2,450.00 per month; a deposit in the sum of \$2,450.00 was paid.

Both parties acknowledged that the tenants vacated the rental unit on November 16, 2011; the landlord stated he has not been given the keys and does not have his own key to the unit.

The tenant testified that on November 17, 2011, registered mail sent to the landlord that contained the tenant's forwarding address and a request for the deposit, was mailed to the address given by the landlord at the start of the tenancy. The mail was returned as unclaimed.

The landlord stated that he had been checking the mail at the rental unit address and that during this time had also been away. The landlord stated he did receive a postal notice for mail but when he went to the postal office to retrieve the mail it had been returned to the tenants.

The tenant stated that on November 26, 2011, he sent the landlord an email that had the registered meal receipt attached.

The landlord replied to the tenant's email on December 9, 2011; indicating he had yet to receive the keys to the rental unit.

The landlord confirmed that he had provided the tenant with his service address at the start of the tenancy; the same address used for successful delivery of the notice of this hearing.

The landlord has not returned the deposit, as he submits he has not been given the forwarding address. Since receiving the tenant's application he has not submitted a claim against the deposit.

Analysis

Based on the testimony of both parties, I find that this tenancy ended on November 16, 2011; the date the tenants vacated. The landlord testified he was aware that the tenants no longer lived in the unit; effective November 16, 2011. A failure to obtain keys does not thwart the landlord from taking possession of a unit when the tenants have given notice ending the tenancy and they have vacated the unit.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Section 90 of the Act provides:

90 *A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents] is deemed to be received as follows:*

(a) if given or served by mail, on the 5th day after it is mailed

The landlord testified that he did not receive the tenant's forwarding address; however, I find that the tenant did serve the landlord with the forwarding address, to the service address given to the tenant by the landlord and that the mail is deemed received on November 22, 2011.

I have not accepted the landlord's testimony that he had been expecting the keys from the tenant, so had only been checking the rental unit for mail. There was no evidence before me that the landlord was away during the time the registered mail was available for pick-up at the postal office. A failure to retrieve registered mail does not avoid service. Therefore, I find that 5 days after November 17, 2011, the landlord is deemed to have received the registered mail that contained the written forwarding address. The mail was returned to the tenants, as unclaimed; either by the choice or a failure of the landlord to understand the consequences for failing to ensure mail was claimed. If the landlord were away he was free to assign an agent to accept registered mail deliveries.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is a dispute; however, the landlord has not yet submitted a claim for compensation.

I note that the landlord has collected a deposit that is double the amount allowed by section 19 of the Act.

As the landlord has not returned the deposit, I find that the tenants are entitled to return of double the \$2,450.00 deposit paid to the landlord.

I find that the tenant's application has merit, and that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for each party.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$4,950.00, which is comprised of double the \$2,450.00 deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$4,950.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia 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: February 02, 2012.

Residential Tenancy Branch