



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was scheduled in response to an application by the tenants for a monetary order as compensation for the double return of the security deposit / and recovery of the filing fee. One of the tenants participated in 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 tenants includes the Canada Post tracking numbers for the registered mail.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 1, 2009. Monthly rent of \$850.00 was payable in advance on the first day of each month, and a security deposit of \$425.00 was collected. A move-in condition inspection report was completed on April 29, 2009 by way of handwritten notations made on a single sheet of paper.

By letter dated May 31, 2011, the landlord gave the tenants 2 months’ notice to end the tenancy. In this regard, section 49 of the Act addresses **Landlord’s notice: landlord’s use of property**. Notice was not given on the prescribed form but, rather, by way of a letter handwritten by the landlord. The reason shown in the letter for ending the tenancy was that the landlord was “taking over” the unit as “my personal residence.” A move-out condition inspection report was completed on July 31, 2011 by way of handwritten notations added to the same single sheet of paper used for the move-in condition inspection report.

As to the disposition of the security deposit, it has not been returned to the tenants and evidence submitted by the tenants includes a copy of a handwritten letter from the landlord in which she states, in part:

Please be advised that my cost to repair the above superceded your damage deposit.

While the tenant testified that the landlord was clearly aware of the tenants' mailing address for the purposes of returning the security deposit, there is no unequivocal evidence before me of the tenants' having provided the landlord with their forwarding address in writing for this purpose.

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 90 of the Act speaks to **When documents are considered to have been received**. Concerning the tenants' mailing of the hearing package to the landlord by registered mail, this section of the Act provides that the package is deemed to be received "on the 5th day after it is mailed." Accordingly, despite the landlord's absence from the hearing, I find that she was properly served for the purposes of the Act.

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.

In the circumstances of this dispute, as previously noted, in the absence of sufficient evidence that the tenants informed the landlord in writing of their forwarding address, the tenants' application for a monetary order as compensation for the double return of the security deposit is hereby dismissed with leave to reapply.

Finally, arising from the tenant's testimony during the hearing, the attention of both parties is drawn to section 51 of the Act which addresses **Tenant's compensation: section 49 notice**.

Conclusion

The tenants' application is hereby dismissed with leave to reapply.

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 13, 2012.

Residential Tenancy Branch