



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in repose to the tenants' application for a Monetary Order for the return of double the security deposit.

One of the tenants, the landlord, a translator for the landlord and the landlords Legal Council attended the conference call hearing. The tenant and landlord gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on July 01, 2011. The tenants vacated the rental unit on November 01, 2011. Rent for this unit was \$725.00 for the first six months and \$750 thereafter. Rent was due on the first day of each month in advance. The tenant paid a security deposit of \$500.00 on July 01, 2011.

The tenant testifies that the landlords did not conduct either a move in or a move out condition inspection or report at the start or end of the tenancy. The tenant testifies that they gave the landlord one clear months notice to end the tenancy and cleaned the rental unit and took pictures of the unit. The tenant testifies there was no damage to the unit and they handed over the keys to the unit to the landlords' father.

The tenant testifies that the landlord was given their forwarding address in writing on November 05, 2011 and this was handed in person to the landlords' mother on this date. The tenant testifies that the landlords refuse to return their security deposit and blames the tenants for a friend of the tenants' truck causing damage to the landlords' garage on the day the tenants moved out. The tenant testifies that he has no knowledge that their friend's truck caused any damage to the landlords' garage and has provided documentary evidence from ICBC who rejected the landlords claim. The tenant states the landlord must now return double their security deposit as he failed to return it to them within 15 days.

The landlord confirms receipt of the tenants forwarding address. Legal Council for the landlords states that the landlords were not aware they only had 15 days to return the tenants security deposit. Legal Council for the landlord states that on the day the tenants were moving out one of the landlords saw a red pickup truck on the drive way. The landlord heard a bang and came down and saw a dent in the garage doors. When the landlord asked the tenants about this they claimed to not know anything about the dent. Legal Council for the landlord states the landlord filed a claim through ICBC and provided the licence number for the tenants' friends' truck. Legal Council states this claim was rejected because the landlord had insufficient evidence to show it was this truck that caused the damage.

Legal Council for the landlord states a neighbour has now come forward as a witness to this truck hitting the landlords' garbage so the landlords will be filing a new claim for damage through ICBC.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlords' right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security deposit for damage has been extinguished the landlords are not entitled to file a claim to keep the security deposit and if the deposit have not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlords their forwarding address in writing the landlords must pay double the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on November 05, 2011. As a result, the landlords had until November 20, 2011 to return the tenants security deposit. I find the landlords did not return the security deposit. Therefore, I find that the tenants have established a claim for the return of double the security deposit to the sum of **\$1,000.00** pursuant to section 38(6)(b) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,000.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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 10, 2012.

Residential Tenancy Branch