



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This hearing was scheduled in response to the tenants' application for a monetary order as compensation for the double return of the security deposit. The tenants and a family member assisting them participated in the hearing and gave affirmed testimony.

The application for dispute resolution and the notice of hearing (the "hearing package"), were served on the landlord on February 12, 2012 by way of insertion through the mail slot on the front door of the landlord's private residence. While the landlord did not attend the hearing, on March 29, 2012 the Residential Tenancy Branch received a documentary submission from the landlord for the purposes of the hearing. The tenants testified that they had not been served with copies of the landlord's submission. The documents submitted by the landlord are as follows:

- a copy of the notice of hearing
- a copy of the residential tenancy agreement
- a copy of an invoice for basement carpet cleaning in the amount of \$235.20
- a copy of a Mutual Agreement to End a Tenancy

Following from all of the above, I find that the landlord was informed of the hearing and that she was sufficiently served for the purposes of the Act.

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 month-to-month tenancy began on July 1, 2010. Monthly rent of \$850.00 was payable in advance on the first day of each month, and a security deposit of \$400.00 was collected. A move-in condition inspection report was not completed.

By way of a Mutual Agreement to End a Tenancy the parties agreed to end the tenancy effective January 31, 2012. The Mutual Agreement to End a Tenancy was signed by the landlord and by male tenant "SC" on November 27, 2011. On female tenant "DT's" behalf, male tenant "SC" printed female tenant "DT's" name on the Mutual Agreement to End a Tenancy. Male tenant "SC" testified that the landlord informed them that they were at liberty to vacate the unit before January 31, 2012 if they succeeded in finding alternate accommodation before then. Ultimately, the tenants vacated the unit on or about December 10, 2011, having paid rent up to December 15, 2012. By way of a telephone conversation with the landlord's husband, male tenant "SC" informed the landlord's husband of their intention to vacate the unit and requested an opportunity to meet with the landlord in order to inspect the condition of the unit. The landlord's husband assured male tenant "SC" that he would pass this information along to the landlord (his wife). However, the tenants did not hear back from the landlord or her husband and a move-out condition inspection report was not completed.

Later, while the tenants attempted to contact the landlord in order to make arrangements for the return of their security deposit, their text messages and / or telephone calls were never returned. To date, the tenants' security deposit has not been returned. The tenants testified that at no time have they provided the landlord with their forwarding address in writing.

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** and provides in part:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, I find that subsequent to the end of tenancy on or about December 10, 2012, the tenants have not provided the landlord with their forwarding address in writing. However, the tenants still have the option to do so. In the meantime, the tenants' application for a monetary order as compensation for the double return of the security deposit is hereby dismissed with leave to reapply.

Conclusion

The tenants' application is 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: April 16, 2012.

Residential Tenancy Branch