



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 response to the tenants' application to recover double the security deposit.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants 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

Are the tenants entitled to a Monetary Order for double the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on April 22, 2011. Rent for this unit was \$850.00 per month and was due on the 22nd of each month in advance. The tenants paid a security deposit of \$425.00 on April 21, 2011. The tenants moved from the rental unit on April 21, 2012.

The tenants testify that a previous hearing took place on April 20, 2012. The tenants testify that they gave the landlord their forwarding address in writing as part of their evidence package provided for the landlord for that hearing. The landlord returned the

tenants security deposit of \$425.00 to address similar to the one the tenants had provided and fortunately the post office was able to deliver the cheque to the tenants' correct address. This cheque although dated for May 01, 2012 was not posted until May 17, 2012 as shown on the postmark on the envelope provided in evidence. The tenants have since cashed this cheque but still seek a Monetary Order for \$425.00 as the landlord did not return their security deposit with 15 days of the date they received the tenants forwarding address in writing or the end date of the tenancy. The tenants have provided a copy of the letter that was included in the previous hearings evidence package.

The tenants also state that the landlord failed to complete a move in or a move out inspection of the rental unit with the tenants and therefore has extinguished their right to keep the security deposit.

The landlord testifies that the tenants did not want to talk to the landlords when they moved out. When the landlord realized the address given was the tenants forwarding address the landlord sent the tenants a cheque for the return of their security deposit. The landlord testifies that she works full time and also runs a house so does not have time to deal with these issues.

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.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on April 20, 2012 and the tenancy ended on April

21, 2012. As a result, the landlords had until May 06, 2012 to return the tenants security deposit. The landlords failed to complete a move in or a move out inspection of the unit with the tenants and the landlords have therefore extinguished their right to file a claim against the security deposit. I find the landlords did not return the security deposit within 15 days and as the cheque was posted to the tenants on May 17, 2012 it was not deemed to have been received until May 22, 2012; therefore, I find that the tenants have established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act*.

As the landlord has since returned the sum of \$425.00 I will deduct this sum from the tenants' monetary award leaving a balance due to the tenants of \$425.00

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 **\$425.00**. 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: July 09, 2012.

Residential Tenancy Branch