



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 an application by the tenants for a monetary order reflecting compensation for the double return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

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, a copy of which is not in evidence, what eventually became a month-to-month tenancy began on January 1, 2011. Monthly rent of \$1,400.00 was due and payable in advance on the first day of each month, and a security deposit of \$700.00 was collected.

By e-mail dated June 18, 2012, the landlords informed the tenants that a 2 month notice to end tenancy would later be issued. Thereafter, pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlords issued a 2 month notice to end tenancy. While a copy of the notice is not in evidence, there is no dispute that the date shown on the notice by when the tenants must vacate the unit is August 31, 2012.

Subsequently, by letter of July 1, 2012 which was attached to the rent cheque for the period of July 1 to 15, 2012, the tenants gave notice to end tenancy effective July 15, 2012. In this letter the tenants also provided their forwarding address for the purposes of repayment of their security deposit.

Thereafter, the tenants vacated the unit on July 15, 2012, and in response to an e-mail instruction from the landlords by date of July 14, 2012, the tenants left the unit keys and once again their forwarding address in the rent mail box.

By e-mail dated July 16, 2012, in addition to other text, the landlords thanked the tenants for “dropping the keys” and asked that they “kindly provide an address.” By e-mail reply on this same date, the tenants provided a forwarding address.

Later, on July 30, 2012, the tenants inquired of the landlords by e-mail, in part as follows:

Please let me know if you will be mailing the damage deposit to my forwarding address or if I can pick it up somewhere.

By e-mail on that same date, the landlords responded, in part:

We mailed it today.

Subsequently, by e-mail dated August 2, 2012, the landlords informed the tenants, in part, as follows:

I just realized that [the male landlord] did not send your check because there was no forwarding address. Can you please send me that asap.

In reply, by e-mail which was also dated August 2, 2012, the tenants advised that they “have a new address, different from the one I gave you before.” The tenants then proceeded to provide another forwarding address in this e-mail.

On August 14, 2012, the landlords informed the tenants by e-mail, in part, as follows:

Sorry I forgot it is now in the mail.

Ultimately, by cheque post dated August 2, 2012, the landlords repaid the \$700.00 security deposit. The post mark on the envelope containing the cheque is dated August 20, 2012. The tenants claim the cheque was received on August 21, 2012, and the landlords claim the cheque was cashed on August 27, 2012.

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**. 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.

Based on the documentary evidence and testimony, I find that after the tenancy ended, the tenants provided the landlords with a forwarding address on August 2, 2012. The 15th day from this date is August 17, 2012. Even while the repayment cheque was post dated August 2, 2012, I find that it was not mailed until August 20, 2012, which is beyond the 15 day period available to the landlords for either repaying the security deposit, or filing an application for dispute resolution. The landlords did not file an application for dispute resolution. In the result, I find that the tenants have established entitlement to the double return of their security deposit in the total amount of \$1,400.00 (2 x \$700.00) in addition to the \$50.00 filing fee [total: \$1,450.00]. As \$700.00 of this total amount has already been paid, I find that the net amount owing to the tenants is \$750.00 (\$1,450.00 - \$700.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$750.00**. Should it be necessary, this order may be served on the landlords, filed in the 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: November 02, 2012.

Residential Tenancy Branch