



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was an application by the tenants for a monetary order for the return of their security deposit including double the deposit amount. The hearing was conducted by conference call. The named tenant and the landlord and his wife participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit including double the amount?

Background and Evidence

The rental unit is a suite in a house in Kelowna. The tenancy began in October, 2011. Monthly rent was \$1,200.00. The tenants paid a security deposit of \$600.00 on October 15, 2011.

The tenants notified the landlord by letter dated September 25, 2012 that they intended to move out of the rental unit on October 31, 2012. The tenants provided their forwarding address in the letter.

The male tenant participated with the landlord in a walkthrough inspection of the rental unit on November 2, 2012. The tenant's wife testified that there was no written condition inspection report prepared. Her husband shook hands with the landlord at the end of the walk through, but he did not agree to any deductions from the security deposit.

The landlord's wife testified that the tenants caused damage to the rental unit and during a walkthrough on November 2, 2012 the male tenant agreed to a \$300.00 deduction from the security deposit and shook hands with the landlord in agreement

with the deduction. She said that the landlord sent a cheque to the tenants on November 5, 2012. The landlord submitted that the error in writing the tenant's first name should not have interfered with the cashing of the cheque and the tenants never contacted the landlord to request that the cheque be replaced.

The tenant testified that they received a cheque from the landlord in the amount of \$300.00. She said that the cheque could not be cashed because the tenant's name was misspelled on the cheque. The tenant said that the cheque was received after the expiry of the 15 day period for returning the security deposit. The tenant referred to a postal stamp on the envelope that enclosed the cheque; the envelope bore a postal processing date of November 20, 2012. When the tenants filed their application on November 19, 2012 they had not received the landlord's cheque. They said in the application that they were told on November 17th that a cheque for \$300.00 had been sent, but it was not received until November 23rd. The tenant said that an employee at the informed the tenant that the cheque could not be cashed because of the incorrect name.

The landlord's wife later said that she thought the cheque must have been sent within a few days after it was written; she could not explain why the postal stamp was dated November 20th.

The landlord did not return the security deposit in full within 15 days and he did not file an application for dispute resolution to claim the deposit. The landlord claimed to have a verbal agreement with the tenant permitting him to keep a portion of the deposit, but there was no written condition inspection report and the tenant did not give any written consent to a deduction from his deposit.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenants provided the landlord with her forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the landlord did not make an application for a monetary order to claim the deposit. I find that the landlord sent a cheque in the amount of \$300.00, but did not send it within the 15 day period and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$1,200.00. . The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,250.00 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court. The tenants must return to the landlord the \$300 cheque that they hold.

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 21, 2013

Residential Tenancy Branch

