



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing concerns an application by the tenants for a monetary order for the return of their security deposit and pet damage deposit / and recovery of the filing fee.

Both tenants attended the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing by way of registered mail, the landlord did not appear. Evidence submitted by the tenants includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was “successfully delivered.”

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 2 separate written tenancy agreements, copies of which are not in evidence, the 2 separate fixed terms of tenancy were as follows:

December 1, 2011 to May 31, 2012

June 1, 2012 to November 30, 2012

Monthly rent of \$900.00 and utilities of \$100.00 were both due and payable in advance on the first day of each month during the first fixed term.

As to the second fixed term, monthly rent of \$1,200.00 and utilities of \$150.00 were both due and payable in advance on the first day of each month.

At the start of the first fixed term, a security deposit of \$450.00 and a pet damage deposit of \$200.00 were collected. These deposits were carried forward to the second fixed term.

While the tenants testified that a move-in condition inspection report was completed at the very beginning of tenancy, they also testified that the landlord failed to provide them with a copy. Neither is there a copy of such a report before me in evidence.

On October 6, 2012, by way of e-mail and in writing, the tenants gave notice to end tenancy effective November 1, 2012. Subsequently, in response to the landlord's request, the tenants vacated the unit on October 26, 2012. The tenants testified that their departure on October 26, 2012 was undertaken in order to accommodate new renters which the landlord had found for the unit for November.

The tenants testified that while there was a walk-through of the unit at the end of tenancy, a move-out condition inspection report was not completed. Further, the tenants testified that the landlord identified no concerns with the condition of the unit during the walk-through.

Recognizing that the landlord had incurred no loss of rental income as a result of new renters being available for November 2012 (the final month of the second fixed term), and having concluded that the landlord was satisfied with the condition of the unit, the tenants sought to resolve the disposition of the security and pet damage deposits. The tenants understood, for example, that the landlord considered there were some monies still owed for utilities. However, during a telephone conversation with the landlord on November 8, 2013, the tenants were surprised to learn that the landlord had a range of miscellaneous concerns which he considered entitled him to retain both deposits in full.

Following this telephone conversation, by letter dated November 9, 2012 the tenants informed the landlord of their forwarding address and requested the return of both deposits. A couple of e-mail exchanges subsequently took place between the parties, however, no portion of either deposit was ultimately ever repaid to the tenants.

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 / pet damage deposit(s) 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 / pet damage deposit(s), and must pay the tenant double the amount of the security / pet damage deposit(s).

Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, I find that the landlord neither repaid the security / pet damage deposit(s), nor filed an application for dispute resolution within 15 days of being informed by the tenants of their forwarding address by letter dated November 9, 2012.

Accordingly, I find that the tenants have established entitlement to compensation in the total amount of **\$1,350.00**, which is calculated as follows:

\$900.00: (2 x \$450.00 security deposit)
\$400.00: (2 x \$200.00 pet damage deposit)
\$50.00: filing fee

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,350.00**. Should it be necessary, this order may be served on the landlord, 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: March 21, 2013

Residential Tenancy Branch

