



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0931291 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit, plus their filing fee.

The tenants and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

During the hearing, the parties confirmed that they received the evidence from the other party prior to the hearing and that they had the opportunity to review the evidence. I find the parties were served with evidence in accordance with the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on July 1, 2012 and ended on December 31, 2012, requiring vacant possession to the landlord by December 31, 2012. Monthly rent in the amount of \$950.00 was due on the first day of each month. A security deposit of \$480.00 was requested by the landlord and paid by the tenants at the start of the tenancy, which is more than half of the monthly rent permitted by the *Act*, and will be addressed later in this decision.

The tenancy ended on December 31, 2012 when the tenants vacated the rental unit at the end of their fixed term tenancy. The tenants stated that they received a cheque from

the landlord dated January 20, 2013 in the amount of \$223.40 which they have not cashed to date. The cheque is nearly stale-dated as it was issued in January 2013.

Both parties confirmed that a move-in condition inspection was completed at the start of the tenancy, however, the landlord did not complete a move-out condition inspection at the end of the tenancy. The tenants write in their documentary evidence that they e-mailed their forwarding address to the manager on December 28, 2012, and then followed up with a second e-mail on January 8, 2013 to confirm if they had the correct e-mail address. On January 19, 2013 the tenants write that they sent a text message to the landlord with their forwarding address, and that by February 15, 2013, they had received a cheque from the landlord in the amount of \$223.40 which was less than their original \$480.00 security deposit. The landlord stated during the hearing that his manager had forwarding him the tenants' written forwarding address on January 20, 2013. The landlord stated that he signed a cheque for the tenants on the same day, January 20, 2013 and mailed it to the tenants.

The tenants stated that they did not cash the cheque from the landlord as they did not agree to any deductions from their security deposit. The landlord confirmed that he did not file an application claiming towards the tenants' security deposit.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Amount of security deposit – The landlord requested and accepted \$480.00 at the start of the tenancy. Monthly rent was \$950.00 per month. Section 19 of the *Act* states:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the above, **I find** the maximum security deposit that the landlord could request was \$475.00. As the landlord exceeded that amount by \$5.00, **I caution** the landlord to comply with section 19 of the *Act* in the future.

Tenants' claim for the return of double the security deposit and pet damage deposit – I accept that the tenancy ended on December 31, 2012. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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.

(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.

[emphasis added]

In the matter before me, the landlord confirmed that he did not submit an application claiming towards the tenants' security deposit. Furthermore, the landlord did not have permission from the tenants to deduct any amount from their security deposit. Given the above, under section 38 of the *Act*, the landlord had to return the full security deposit to the tenants or file an application to claim towards the security deposit within 15 days of receiving the tenants' forwarding address in writing. Although e-mails and texts do not have service provision under the *Act*, the landlord did confirm that he had received the tenants' written forwarding address as of January 20, 2013 via his manager.

Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing January 20, 2013 having not made a claim towards the security deposit. Therefore, **I find** the tenants are entitled to the return of double their original security deposit of \$480.00 for a total of **\$960.00**. I note that the security deposit has accrued \$0.00 in interest since the start of the tenancy.

As the tenants were successful with their application, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$1,010.00**, comprised of \$960.00 for the doubled security deposit, and the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,010.00** as the cheque mailed from the landlord for a portion of the security deposit dated January 20, 2013 is near its stale-date. If the tenants are able successfully cash the cheque from the landlord in partial satisfaction of the monetary order, the monetary order will be reduced by the amount of that cheque, \$223.40. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the tenants a monetary order under section 67 in the amount of \$1,010.00 as the cheque dated January 20, 2013 is near its stale-date. If the tenants are able successfully cash the cheque from the landlord in partial satisfaction of the monetary order, the monetary order will be reduced by the amount of that cheque, \$223.40. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 10, 2013

Residential Tenancy Branch

