



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 the tenant's Application for Dispute Resolution, in which the tenants have requested a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to return of the \$450.00 security deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy ended effective May 6, 2013, as the result of a 2 month Notice ending tenancy for landlord's use. The tenancy started on April 6, 012, rent was due on the 6th day of each month and a deposit in the sum of \$450.00 was paid.

The landlord said an inspection was completed at the start of the tenancy; an inspection report was not completed at the end of the tenancy. The tenants said inspection reports were not completed.

The landlord said that the tenants moved out early; the tenants said that they did locate a new rental, but kept possession of the unit until the effective date of the Notice. The

tenants did not pay rent due on April 6, 2013, as compensation provided in accordance with the Act.

On April 26, 2013 the tenants sent their forwarding address to the landlord, via registered mail. The tenants had attempted to personally deliver the address the day prior but no one came to the door, despite the tenants hearing the sounds of someone in the home.

The landlord confirmed that they were away and that they had directed their son not to accept packages. The landlord's son did refuse to accept the registered mail.

The landlord confirmed that they had received the hearing package which included the tenant's forwarding address. The tenants had sent the hearing package to the landlord, on June 11, 2013.

The landlord said the deposit was not returned as the tenants caused damage to the rental unit.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Residential Tenancy Branch policy suggests that where a document is served by registered mail, the refusal of the party to accept the registered mail, does not override the deemed service provision of the Act. Section 90 of the Act determines that documents are deemed served on the 5th day after mailing.

I find that the landlord's instructions that mail not be accepted by their son thwarted the tenant's attempts to serve the landlord with their written forwarding address. Therefore, I find that the landlord is deemed to have received the forwarding address no later than May 1, 2013; 5 days after the address was mailed.

The landlord was then required to submit a claim against the deposit no later than April 16, 2013, or to return the deposit by that date. As the landlord failed to take either step, I find, in accordance with section 38(6) of the Act that the tenants are entitled to return of double the \$450.00 security deposit.

As the tenant's application has merit, and I find that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$950.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to return of double the \$\$450.00 security deposit.

The tenants are entitled to the \$50.00 filing fee cost.

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: September 16, 2013

Residential Tenancy Branch

