



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenants by posting on July 18, 2013. The Residential Tenancy Act permits a landlord to serve a tenant by mailing, by registered mail to the forwarding address provided by the tenants. It is deemed received 5 days after mailing. I determined the tenant provided the landlord with their forwarding address in writing on September 16, 2013. I further determined that the landlord sufficiently served the tenants by mailing, by registered mail to the forwarding address provide by the Tenants on September 18, 2013. The landlord testified one of the packages was returned with a notation "unclaimed." The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. I determined there was sufficient service of the Application for Dispute Resolution on each of the Tenants. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on December 15, 2012 and continue for a fixed term ending on December 31, 2013. The rent was \$1800 per month payable on the first day of each month. The tenants paid a security deposit of \$900.

The tenants failed to pay all of the rent for July with a balance owing of \$300. The tenants vacated the rental unit at the end of July without giving the landlord notice. The landlord was not able to rent the rental unit for August and September. The rental unit was eventually rented with the new tenants taking possession on October 15, 2013.

Analysis:

The Application for Dispute Resolution filed by the Tenant seeks an order to keep the security deposit and the \$50 filing. The security deposit is the tenants' money. The landlord is only entitled to an order to retain the security deposit if the landlord can prove a monetary claim against the tenant. I accept the testimony of the landlord that the tenants owe the landlord the sum of \$300 for non-payment of rent for July. In addition the tenants vacated the rental unit prior to the end of the fixed term. They failed to give notice and the landlord was not able to rent the rental unit for August thus losing \$1800 in rent for that month. As the landlord has established a claim in excess of the security deposit I ordered that the landlord shall retain the security deposit in satisfaction of the landlord's claim for non-payment of rent for July and loss of rent for August.

This decision does not consider the landlord's potential claim for cleaning and for loss of rent for September and half of October. The landlord has the right to file an Application for Dispute Resolution making those claims.

As the landlord has been successful in its claim I order that the tenants shall pay to the landlord the sum of \$50 for the cost of the filing fee.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: October 22, 2013

Residential Tenancy Branch

