



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The tenant applied for the return of a security deposit, including double the amount of the deposit. The landlord applied for compensation including retention of a deposit. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of a deposit?

Are the tenants entitled to recover double the amount of the deposit?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The tenants submitted a binder of documentary evidence in support of their application. They did not provide a copy of their evidence to the landlord. I have therefore excluded the tenant's documentary evidence and have not considered it in making my decision in this matter. The decision is based solely upon the oral testimony of the parties at the hearing.

The rental unit is a strata title house in Maple Ridge. The tenants responded to an advertisement and viewed the house in July. They met the landlord on July 23 and agreed to rent the house commencing September 1, 2013. They paid the landlord a deposit of \$1,100.00. The landlord did not prepare a tenancy agreement when he received the tenant's deposit. The tenant testified that soon after they signed the tenancy agreement they discovered facts about the landlord that caused them to decide that they no longer wanted to rent the landlord's property. According to the landlord, the tenants told him in an e-mail on July 28, 2013 that they were not going to rent his house

because they were “Alberta bound”. The landlord said that he endeavoured to rent the house for August, but only found a new tenant commencing September 1, 2013. The landlord made his application to claim compensation on August 12, 2013.

The tenants applied on August 21 to claim the return of their deposit, including double the amount of the deposit.

Analysis

The *Residential Tenancy Act* requires that a landlord must prepare a written tenancy agreement in all cases.

Section 20 of the *Act* provides that:

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;

Section 7 (2) of the *Act* provides that:

- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The tenants agreed to rent the landlord's house on July 23rd. The *Residential Tenancy Act* requires a landlord to create a written tenancy agreement in every case and the landlord must not require the payment of a security deposit except when the landlord and the tenant enter into such a tenancy agreement.

I find that the landlord should not have received the \$1,100.00 payment from the tenants on July 23rd without, at the same time creating a written tenancy agreement. Whether or not the tenants were justified in ending the tenancy on July 28th, before it was to commence on September 1st, pursuant to section 7 of the *Residential Tenancy Act* the landlord was obliged to do what was reasonable to minimize or mitigate his loss, if he considered the tenants to have breached the agreement. On the evidence presented, the landlord re-rented the rental unit effective September 1st and he has therefore suffered no loss as a result of the tenants' decision to back out of the agreement to rent the landlord's house commencing September 1, 2013. The landlord's

application for a monetary award and an order to retain the tenants' security deposit is therefore dismissed without leave to reapply.

The landlord's claim was submitted on August 12, 2013. The tenants have not shown that the landlord failed to return the tenants' deposit or make a claim against it within 15 days after he received the tenants' forwarding address in writing. I find that the tenants are entitled to recover their \$1,100.00 deposit, but that they are not entitled to double the amount of the deposit. There is no documentary evidence that I may consider and the tenants have not proved delivery of their forwarding address in writing. Because the tenants failed to comply with the requirements to provide their evidence to the landlord I decline to award a filing fee to the tenants for this application.

Conclusion

The landlord's claim has been dismissed without leave to reapply. I grant the tenants a monetary award under section 67 in the amount of \$1,100.00. This order may be registered 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: November 22, 2013

Residential Tenancy Branch

