



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenant for the return of her security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant participated in the hearing and her son was present on the call with her. The landlord called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

Background and Evidence

The rental unit is a residence in Chilliwack. The tenancy began on November 1, 2012. Monthly rent was \$1,250.00 payable on first day of each month. The tenant paid a security deposit of \$625.00 at the start of the tenancy.

On September 27, 2013 the tenant notified the landlord in writing that she intended to move out of the rental unit at the end of October, 2013. The tenant provided a forwarding address in the written notice given to the landlord. The tenant met with the landlord at the end of the tenancy. She agreed that she owed the landlord the sum of \$110.68 for an outstanding water bill and agreed that the landlord could deduct that amount from her security deposit. The tenant moved out before the end of the month. The tenant testified that she received a cheque from the landlord in the amount of \$241.07 on November 16, 2013. The tenant claimed double the amount of the security deposit of \$625.00 because the landlord did not return the cheque within 15 days after the end of the tenancy. She said that the landlord had no objections about the condition of the house at the time she moved out.

The landlord testified that on November 14th she attended at the address given by the tenant to ensure that it was a proper address. The landlord testified that the address was a commercial property with four buildings, including a car wash business. The landlord asked for the tenant at one of the businesses and the proprietor said that he did not know of her.

The landlord was unable to return to the address until November 16th and this is when she delivered a cheque to the tenant along with a list of the deductions from the deposit. The landlord credited interest on the deposit in the amount of \$6.25, but deducted \$94.50 for rug cleaning, \$125.00 for cleaning services \$30.00 for an oil stain on the garage floor and \$30.00 for a broken door bell. The landlord said that her actual costs exceeded the amount she deducted from the security deposit.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit.

I am satisfied that the tenants provided the landlords with their forwarding address in writing, and I find that the tenants served the landlords with documents notifying the landlord of this application as required by the *Act*. I accept the landlord's testimony that she endeavoured to locate the tenant to deliver a refund on November 14th, but was unable to confirm that the address was a proper forwarding address for the tenant. She received that confirmation on November 16th when she was able to deliver the cheque to the tenant. I therefore find that the landlord did deliver the cheque within the time provided by the *Act* because on November 14th it was unclear whether the address was a proper mailing address for the tenant and she was only able to hand deliver it when she encountered the tenant at the address on November 16th.

The landlord refunded only a portion of the tenants' security deposit within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of

section 38(6) therefore applies. The landlord had a verbal acknowledgement with respect to the water bill, but did not have the tenant's written consent to retain any part of the deposit as required by the *Residential Tenancy Act*. I find that the tenant is entitled to an award in the amount of double the security deposit that the landlord held after the expiry of the 15 day period; this was the sum of \$383.93. I grant the tenant's application and award her the sum of \$767.86, being double the amount of the security deposit held by the landlord after the 15 day period. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$817.86. The tenant acknowledged at the hearing that she is responsible for water bill of \$110.68 and she agreed that the said amount should be deducted from this award, leaving the amount of \$707.18 due to the tenant; I grant the tenant a monetary order against the landlords in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

The landlord may file her own application for dispute resolution against the tenant if she intends to pursue a claim for the cost of repairs and cleaning.

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: February 24, 2014

Residential Tenancy Branch

