



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing concerns the tenant's application for a monetary order reflecting return of the full security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy Agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the year – long fixed term tenancy began on June 01, 2010. Yearly fixed terms were repeatedly renewed. The landlord's agent testified that the final fixed term of the tenancy was from June 1, 2013 to May 31, 2014.

Monthly rent was due and payable in advance on the first day of each month. At the start of tenancy rent was \$1,100.00, however, at some point the parties mutually agreed to a \$50.00 reduction to \$1,050.00. A security deposit of \$550.00 was collected, and a move-in condition inspection report was completed with the participation of both parties.

By email dated July 29, 2013, the tenants gave notice to end tenancy effective "at the end of July." Thereafter, however, the tenants paid rent to the end of August 2013 and maintained possession of the unit for the better part of that month. A move-out condition inspection report was completed with the participation of both parties on August 20 and 24, 2013. By way of his signature on the report, the tenant agreed to the landlord's withholding of \$275.00 from the original security deposit of \$550.00, and the tenant provided a forwarding address on the move-out condition inspection report. A new renter was found for the unit effective from September 01, 2013.

By way of “official cheque” (similar to a money order or bank draft) dated September 06, 2013, the landlord claims to have repaid the \$275.00 agreed to, by way of hand delivery to the tenant’s forwarding address provided on the move-out condition inspection report. The “official cheque” was purchased by “MB,” the landlord’s wife, from the Coast Capital Savings Credit Union. A copy of the “official cheque” was submitted in evidence. By letter dated February 6, 2014, the landlord affirmed that the “official cheque” was delivered in an envelope to the tenant’s forwarding address by being “secured inside between the door and casement and was in no way accessible from the outside.” The “official cheque” was accompanied in the envelope by a letter to the tenants from the landlord by date of August 26, 2013. Further, by letter dated February 06, 2014, family member “AB” affirmed that she accompanied the landlord on September 06, 2013 at which time she witnessed him deliver the “official cheque” and letter as described above. However, the tenant claims that the envelope was not received, and he speculates that it may have been disposed of by his and his wife’s young child.

The landlord’s agent testified that there is no means available for putting a stop payment of the “official cheque.” However, the landlord’s agent suggested that the tenant has the option to attend the issuing financial institution along with the landlord, in order to affirm that the instrument has not in fact been received and / or negotiated. The landlord’s agent testified that this could potentially lead to the re-issuance of the instrument but, according to the landlord’s agent, the tenant has thus far not been receptive to participating in such a process.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, in part as follows:

38(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or...

Based on the documentary evidence and testimony, I find that by way of his signature on the move-out condition inspection report, the tenant agreed to the landlord’s retention of \$275.00 from the original security deposit of \$550.00.

As to the remaining balance of the security deposit in the amount of \$275.00 (\$550.00 - \$275.00), section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and testimony, I find that the tenancy ended August 31, 2013. I further find that the landlord paid a fee to a *bona fide* financial institution for the purchase on September 06, 2013 of an "official cheque" in the amount of \$275.00. On a balance of probabilities I find that the "official cheque" was hand delivered on September 06, 2013 to the forwarding address provided by the tenant, along with a letter from the landlord to the tenant by date of August 26, 2013. While the fate of the envelope containing the "official cheque" and letter may not ever be conclusively determined, I find that the landlord fulfilled his responsibilities with regard to the repayment of the security deposit in compliance with the Act. Accordingly, I find that the doubling provisions of the Act do not apply, and the tenant's application for repayment of any portion of the security deposit in addition to recovery of the filing fee must be dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

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 20, 2014

Residential Tenancy Branch

