



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 VEITCH REALTY - CRESTON
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

In the first application the landlord, assisted by its agent Mr. W., seeks a monetary award for unpaid rent and the cost to dispose of a freezer.

In the second application the tenants seek return of a security deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the “Act”).

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a two bedroom house on a city lot. The tenancy started in June 2006 and ended November 30, 2013. The final monthly rent was \$882.00. The landlord holds a \$425.00 security deposit. The tenants provided a forwarding address in writing on December 2, 2013. The landlord signed its application on December 13, 2013. The application was stamped received by the RTB Kelowna branch on December 16th. The filing fee was paid December 16th. The hearing letter scheduling this matter is dated December 19th. The landlord served the tenants by mail sent December 20th.

The landlord’s representative presented a written agreement whereunder the tenants had agreed to pay rent in arrears at the rate of \$50.00 per month. The agreement provides for acceleration of the balance in the case of default or the ending of the tenancy. The landlord’s business records disclose a balance due of \$594.00 at the end of the tenancy.

The tenants left a freezer in the home. It cost the landlord \$60.00 to have it removed.

The tenants argue that they also left a working clothes dryer and that they had an arrangement to leave it in lieu of having to remove the freezer. The landlord's representative denies such an agreement.

The tenants' witness testified that he help the landlord's workman remove the freezer. This evidence does not seem to bear on the question of whether or not the landlord paid the workman or whether the tenants are responsible to reimburse the landlord for that payment.

The tenant Ms. K.B. testified that she waited fifteen days after giving her forwarding address in writing to the landlord and that the Residential Tenancy Office then indicated to her the landlord would be responsible to pay her double. She denies any damage to the home and argues that the landlord therefore had no reason to keep her "damage deposit."

Analysis

The evidence clearly establishes that the tenants had an outstanding rent liability of \$594.00 at the end of the tenancy, as claimed.

The tenants have not established an agreement between the parties for the landlord to keep the dryer in lieu of having to remove the freezer. The landlord's agent has shown it cost the landlord \$60.00 to have the freezer removed, whether or not the witness Mr. J.B. helped, and the landlord is entitled to recover that sum from the tenants.

In regard to the tenants' request for a doubling of the deposit, the relevant parts of s.38 of the *Act* provide:

Return of security deposit and pet damage deposit

- 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

* * *

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

Recent rule considerations by Residential Tenancy Arbitrators' rule committee appear to have determined that the application a landlord must make under s.38(1)(d) in order to avoid the doubling is "made" when the application is received and the fee has been paid.

On this basis, on these facts, the landlord's application was made within the fifteen days after both the end of the tenancy and receipt of the tenants' forwarding address in writing had occurred. The tenants are not entitled to a doubling of the deposit.

The deposit is a "security deposit" and, subject to the rules relating to such deposits, a landlord is entitled to hold it against any obligation of a tenant, not just against possible physical damage to the premises.

Conclusion

The landlord is entitled to a monetary award of \$654.00 plus the \$50.00 filing fee. I authorize the landlord to retain the \$425.00 security deposit and interest of \$14.15 in reduction of the amount owing. There will be a monetary order against the tenants jointly and severally for the remainder of \$264.85.

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: March 25, 2014

Residential Tenancy Branch

