



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was a hearing with respect to the tenant's application for the return of double the amount of his security deposit. The hearing was conducted by conference call. The tenant and the landlords called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award in the amount of double his security deposit as claimed?

Background and Evidence

The rental property is a house in Coquitlam. The tenancy began in August, 2010. The tenant paid a \$500.00 security deposit at the start of the tenancy. The tenancy ended on September 30, 2013 because the landlords sold the rental property and the new owners intended to move into the rental property.

The tenant testified that he moved out on September 30, 2013 and gave the landlord a letter dated September 30th setting out his forwarding address. He said that he vacated the rental suite and returned the keys on September 30th. The tenant said that he participated in a move-out walkthrough of the rental unit, but the landlord did not complete a move-out inspection form and did not provide him with such a form or with a forwarding address after the end of the tenancy.

On November 14, 2013 the tenant applied for a monetary award in the amount of \$1,000.00, being double the amount of his deposit. In his application he said in part as follows:

Landlords refused to provide to provide me a forwarding address or contact information so I have been unable to inquire as to where things are in returning

my damage deposit to me. The landlords have provided nothing in writing to my forwarding address regarding if they will keep all or a portion of the damage deposit. I have not consented to the landlord keep any portion of the damage deposit and expect the entire \$500 damage deposit returned to me. It has been more than 15 days since I moved and provided my forwarding address and so am seeking a monetary order in the amount of \$1,000 , which is double the damage deposit.

The tenant said that he sent another copy of the letter to the landlord in October and it was picked up by the landlord on October 25th. The tenant acknowledged at the hearing that he did receive a letter from the landlords enclosing a bank money order in the amount of \$475.00 and that he received this near the end of October, although he did not mention the letter or the payment in his application filed two weeks later. At the hearing the tenant said that the payment did not constitute the return of his deposit and he would have returned the payment if it had not been in the form of a bank money order, but instead he cashed it on November 5, 2013.

The landlords testified that the tenant's September 30th letter was actually given to the landlords a few days before September 30th. The tenant agreed to meet the landlord on September 30th at 10:00 A.M. to conduct a condition inspection. The landlord said that when he met the tenant at the rental unit to conduct the inspection he had his camera, a note book and the RTO move out inspection form with him. He testified that the tenant told him that he was very busy and had no time to take part in a detailed inspection. The landlord pointed out several deficiencies, some damage, and areas that had not been cleaned. He said that the tenant told him to hurry up, said that the conditions were normal and told the landlord that he had to leave and the landlord could take his pictures later. The landlord said that the tenant said something about doing the inspection later before he left without reviewing or signing the condition inspection, but the landlord testified that there was no possibility of continuing the inspection later because the new owners were taking possession of the house later that day. Because the new owners insisted that the house be cleaned and ready for immediate occupancy, the landlord had to hire cleaners to immediately perform the necessary cleaning. They deducted \$50.00 from what they incorrectly was the deposit amount of \$525.00 and sent the tenant a cheque for \$475.00. The actual deposit was only \$500.00.

At the hearing the tenant said that he was seeking a monetary award of \$525.00, being double the deposit amount less the sum of \$475.00 that he acknowledged having received.

Analysis

Section 38 of the *Residential Tenancy Act* provides that a landlord must repay a tenant's security deposit or make an application to claim against the security deposit within 15 days after the tenancy ends or the tenant provides his forwarding address in writing, whichever is the later.

The tenant contended that the landlord failed to return his deposit in full within 15 days and therefore this section applies and he is entitled to an award of double the amount of his deposit.

The *Residential Tenancy Act* also provides by sections 35 and 36 as follows:

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

The landlord testified that the tenant refused to take part in the move-out condition inspection and departed before the report was finished. He testified that he completed the report without the tenant. Because the tenant was present, but refused to complete the inspection, I find that the landlords were not required to offer the tenant another opportunity to participate, particularly as here, when the rental had been sold and the new owners were poised to take possession. Section 36 (1) of the *Residential Tenancy Act* provides that the right of a tenant to the return of a security deposit is extinguished if the landlord has complied with the inspection provisions and the tenant has not participated. Because the tenant was present at the move out inspection and refused to participate and complete the report, I find that his right to the return of his security deposit was thereby extinguished. The landlords did not return the tenant's deposit within 15 days, but because the tenant's right to the deposit was extinguished, the landlords were not obliged to comply with the 15 day requirement and the payment returned to the tenant was a gratuitous payment, not one that the landlords were obliged to make.

Conclusion

For the reasons stated the tenant's application for the return of his deposit, including double the amount is dismissed without leave to reapply.

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 31, 2014

Residential Tenancy Branch

