



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD, FF, O

Introduction

This hearing dealt with an application by the tenants for an order compelling the landlord to return double their security deposit. Despite having been served with the application for dispute resolution and notice of hearing sent by registered mail to the address they provided to the tenants as an address for service, the landlords did not participate in the conference call hearing.

Issue to be Decided

Are the tenants entitled to the return of double their security deposit?

Background and Evidence

The tenants' undisputed evidence is as follows. The tenancy began on or about August 1, 2013 at which time the tenants paid an \$822.50 security deposit. The tenancy ended on July 30, 2014 and the tenants gave the landlord their forwarding address in writing on that day.

The parties entered into a written agreement on the last day of the tenancy in which the tenants agreed that the landlord could retain \$220.00 of their security deposit on the condition that he forward to them the expense receipt showing the cost of replacing a broken window. The landlord did not forward that receipt and the tenants now seek to rescind the contract and seek to recover double their security deposit.

The tenants also seek an order compelling the landlord to return rent cheques for the months of July and August 2014.

Analysis

The tenants entered into an agreement whereby they authorized the landlords to retain \$220.00 from their security deposit to pay for a broken window on the condition that they provide a receipt showing the amount paid for the window. Although there was no time set out by which the landlords were required to act, I find that they have had more than 4 months to replace the window and according to the tenants, have not replaced the window despite having had a

reasonable period of time to do so. I find that the landlords have not complied with their obligation under the agreement and therefore I find it appropriate to order that the agreement be rescinded and the parties placed in their pre-agreement position. This has the effect of extinguishing the tenants' agreement that the landlords could retain \$220.00. I find that the landlords must repay the entire amount of the security deposit back to the tenants.

Section 38(1) of the Act provides that within 15 days of the end of the tenancy and the date the landlord receives the tenants' forwarding address in writing, the landlord must either return the security deposit in full or file an application for dispute resolution to retain the deposit. Section 38(6) provides that when a landlord fails to comply with section 38(1), they are obligated to pay the tenants double the security deposit.

I find that the tenancy ended on July 30, 2014 and that the landlords received the forwarding address on that date. I find that the landlords failed to file an application for dispute resolution or repay the deposit in full and that they are therefore obligated to pay to the tenants double the amount of the deposit. I award the tenants \$1,645.00. I further find that as the tenants have been substantially successful in their application, they should recover the \$50.00 filing fee paid to bring their claim and I award them \$50.00 for a total entitlement of \$1,695.00. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As the tenancy ended on July 30, 2014, I find that the landlord has no right to retain the post-dated cheques he received from the tenants for August. I order the landlord to either return those cheques or provide to the tenants a written statement confirming that he has destroyed the cheques.

Conclusion

The landlord is ordered to pay \$1,695.00 to the tenants and is ordered to return the tenants' cheques for August 2014.

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: December 22, 2014

Residential Tenancy Branch

