



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing and both tenants called in and participated. In his application the landlord claimed payment of the sum of \$697.50 said to be for lost rental income and increased costs said to have been incurred as a result of the tenants' delay in moving their possessions from the rental unit. The tenants have submitted their own application to claim payment of double the amount of the security deposit.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenants' security deposit?
Are the tenants entitled to the return of their deposit including double the amount?

Background and Evidence

The rental unit is a basement suite in a house in Vancouver. The tenancy has ended and there was an earlier dispute resolution proceeding with respect to this tenancy. A hearing was conducted on September 17, 2014 and a decision was made that day. The hearing was conducted by conference call to address the tenants' application to cancel a Notice to End Tenancy for unpaid rent and to claim compensation. In the September 17, 2014 decision the arbitrator made certain findings of fact that are determinative of issues raised in the applications that are before me.

As noted in the September 17th decision, this tenancy began on September 28, 2013 for a fixed term ending September 30, 2014 with rent in the \$1,395.00 payable on the first of each month. The tenants paid a security deposit of \$697.50 at the start of the tenancy. On June 15, 2014 the rental unit was flooded due to heavy rains. The tenants

were away at the time of the flood. They did not occupy the unit after the flood and, as recorded in the September 17, 2014 decision: “....they packed up and removed all of their possessions from the property incrementally over a period of days on June 29, July 13 & 22, and August 06, 2014.”

In the September 17th decision the arbitrator found that:

Based on the affirmed testimony and the documentary evidence, which includes photographs, I find that through no apparent fault of either party, flooding occurred in the unit on June 15, 2014. I find that upon returning from overseas, tenant “SJ” first attended the unit on June 23, 2014 to examine the damage. As drying and related repairs to the unit were begun on June 23, 2014, and as many of the tenants’ belongings had been displaced, the tenants did not return to live in the unit. I find that their belongings were ultimately all removed from the unit / property by August 06, 2014.

The arbitrator also found as follows:

I find that the discarding of certain of the tenants’ possessions resulted through no fault of either party; accordingly, the tenants’ claim related to that loss in the amount of \$1,078.00, as well as a claim of \$157.50 for removal and disposal of some furniture, are both hereby dismissed.

The arbitrator awarded the tenants the sum of \$467.00 which was in part a reimbursement of rent for a portion of July. The tenants had also applied for the return of their security deposit, but the claim was dismissed with leave to reapply for the following reasons stated in the September 17th decision:

I find there is insufficient evidence for me to conclude that the tenants informed the landlord of their forwarding address by way of undated letter which the tenants claim was mailed on July 17, 2014. However, I find that the landlord received the tenants’ forwarding address by way of the tenants’ application for dispute resolution. **The landlord is hereby informed that she will be deemed to have received the tenants’ forwarding address on September 22, 2014, and that she has 15 days from that date to deal with the security deposit pursuant to section 38 of the Act.** In the meantime, the tenants’ application for compensation reflecting the double return of the security deposit is hereby dismissed with leave to reapply.

Analysis

The landlord commenced the application that is before me within the 15 day period specified in the September 17th decision. The landlord claimed to be entitled to retain the deposit because of the tenants' failure to remove all their furniture until August 6, 2014. I find that there is no basis for the landlord's claim for compensation in this proceeding because it has already been determined by the September 17th decision that the discarding of the tenants' possession occurred through no fault of either party. The landlord's claim for a monetary order in the amount of the security deposit and the landlord's claim to retain the deposit are therefore dismissed without leave to reapply.

The tenants have applied on November 10, 2014 to claim double the amount of their deposit. Their claim was based upon the assertion that the landlord received the tenants' forwarding address on several occasions prior to September 3, 2014, however, as I stated to the parties at the hearing, I am bound by the findings of fact made by the arbitrator in the September 17th decision. The landlord did make a claim against the security deposit within the time set by the arbitrator. The landlord's claim has been dismissed and the tenants are therefore entitled to a monetary award for the return of the original deposit amount, but not to an award in the amount of double the deposit.

Conclusion

The tenants were unsuccessful in obtaining an award of double their deposit; they could have obtained an order for the return of their deposit upon the landlord's application without the expense of filing a separate application so I decline to award the tenants the filing fee for their application. I grant the tenants an order under section 67 in the amount of \$697.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

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 12, 2014

Residential Tenancy Branch

