



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This was the hearing of an application by the landlord for a monetary award and for an order to retain the tenant's security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlord's named representatives called in and participated in the hearing. The tenants attended and provided testimony as well.

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?

Background and Evidence

The rental unit is a suite in the landlord's housing facility. The tenancy agreement provided that the tenancy began on September 1, 2013, however the landlord's representative said the tenancy began in August. The monthly rent was \$1,027.00 and the tenants paid a security deposit of \$513.50 as well as a pet deposit of \$513.50 plus a remote deposit of \$100.00, for a total of \$1,127.00. The tenants testified that they have been long term tenants of the landlord and have lived in the landlord's rental property for many years, well before their occupancy of the current unit.

The landlord claimed that the tenants moved out without providing 30 days written notice. The landlord's representative said that the landlord received a typed notice on September 30, 2014 concerning the return of keys. The landlord's representative submitted that had proper notice been given by the tenants the landlord would have followed its ordinary administrative procedures which would have included cancelling the pre-authorized rent payments. The landlord's representative said that the landlord did not receive the tenants' move out notice until it was faxed to the landlord on October 2nd. The landlord has claimed payment of October rent in the amount \$1,049.00 plus an

agreed cleaning charge of \$54.00 and the filing fee for this application, for a total of \$1,153.00.

The tenant testified that he gave a typewritten notice to the landlord on August 31, 2014. The Notice said that the tenants would be moved out before the last day of September, 2014. In the notice the tenant provided his cell phone number for the landlord to contact if there were any questions. In the notice he also provided his forwarding address. The tenant testified that he placed the notice in the landlord's drop box at the office in the rental property. He said that the tenants commenced to move out well before the end of September. The tenant said that he encountered the landlord's building manager on several occasions when he was in the course of moving items from the rental unit and he questioned how the landlord could claim to be unaware that the tenants were moving when the landlord's employee had observed him in the process of doing so.

The landlord's building manager said that he did not notice the tenant moving and said that he would not assume someone was moving simply because he might have seen him taking boxes out of the rental unit.

The landlord's representative reiterated that had the landlord received the tenant's notice it would have started the landlord's regular move-out procedures; she submitted that those steps were not taken because the landlord was not given a Notice to End Tenancy until after the tenants had moved.

Analysis

The landlord denied receipt of the tenant's Notice to End Tenancy and submitted that it was not given on August 31, 2014 as claimed by the tenant. I found the tenant's evidence that the notice was given on August 31, 2014 to be honest and credible and I accept his testimony that he put the notice in the landlord's mailbox on August 31, 2014. The fate of that notice is unknown. It is probable that it was lost or mislaid by one of the landlord's employees. Pursuant to section 90 of the *Residential Tenancy Act*, the Notice, given on August 31, 2014 would be deemed to have been received by the landlord three days later, the tenants therefore failed to provide the landlord with a full 30 days' notice, but I do not have evidence to establish that a delay of three days would have impacted the landlord's ability to re-rent the unit and I do not find that the late delivery based on the deemed date of receipt was the operative cause of the landlord's claimed rental loss for October.

I find that the landlord is not entitled to a monetary award for unpaid rent for October and apart from the agreed cleanup charge of \$54.00, the landlord's claim is dismissed without leave to reapply.

Conclusion

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security and pet deposits in partial satisfaction of its monetary claim. Because the claim has been dismissed, save for the agreed sum of \$54.00 without leave to reapply, it is appropriate that I order the return of the balance of the tenants' deposits; I so order and I grant the tenants a monetary order in the amount of \$1,073.00. 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: May 25, 2015

Residential Tenancy Branch

