



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause and for a monetary order for return of all or part of the pet damage deposit or security deposit.

All 3 tenants attended the hearing and each gave affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on October 15, 2014, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the tenants. The tenants have provided a copy of a Registered Domestic Customer Receipt stamped by Canada Post on that date and addressed to the landlord, as well as an on-line tracking document that shows the mail was not collected by the landlord, and was returned to the sender. The tenants also served another package to the landlord by registered mail on April 2, 2015 which contained the tenants' amended application. Also provided is an on-line tracking document showing that the mail was successfully delivered on April 7, 2015, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony of the tenants has been reviewed and is considered in this Decision.

During the course of the hearing the tenants withdrew the application for an order cancelling a notice to end tenancy for cause stating that it was an error on the application form.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit?

Background and Evidence

The first tenant testified that the tenants were to move into the rental unit on September 1, 2014 as a month-to-month tenancy, having paid the landlord a security deposit in the amount of \$950.00 on May 2, 2014. Although there was no written agreement signed by the parties, rent in the amount of \$1,900.00 per month was to be payable on the 1st day of each month. The tenants got the keys to the rental unit but found that it was not fit to live in due to mold, uncleanliness, damages, bed bugs, items and bedding and garbage left behind by previous tenants. The landlord did not cause a move-in condition inspection report to be completed, and after viewing the rental unit the tenants asked the landlord to clean it and the landlord agreed to but didn't.

The tenants never moved into the rental unit, although some belongings were moved in, and none of the tenants ever stayed overnight. On September 4, 2014 the tenants advised the landlord that they would not be moving in and provided a letter to the landlord requesting return of the security deposit, but none of it has been returned. A copy of the letter has been provided, but it does not contain a forwarding address for the landlord to send the security deposit to.

The tenants have provided a copy of an e-mail transfer in the amount of \$950.00 dated May 2, 2014 which shows that the landlord received that amount, and the tenant testified is the security deposit paid to the landlord.

The tenant has not been served with an application for dispute resolution by the landlord seeking an order permitting the landlord to keep the security deposit.

The second tenant testified that he sent an email on April 25, 2014 asking about the security deposit and the landlord responded stating that rent would be \$1,900.00 per month, but no tenancy agreement was signed.

The tenant has not been served with an application for dispute resolution by the landlord.

The third tenant testified that he served the landlord with the letter on September 4, 2014 by giving it to a person who apparently resides with the landlord.

The tenant has not been served with an application for dispute resolution by the landlord.

Analysis

The Residential Tenancy Act is very clear with respect to security deposits. A security deposit and a pet damage deposit are trust monies held by a landlord but do not belong to the landlord. The *Act* states that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return it in full or make an application for dispute resolution claiming against the security deposit or pet damage deposit. If the landlord fails to do so, the landlord is required to repay the tenant double the amount. In this case, I am satisfied that the tenants made a request for return of the deposit on September 4, 2014, and I am satisfied that the landlord hasn't returned it, however the letter

does not provide a forwarding address. Documents served by registered mail are deemed to be received 5 days after mailing, however the *Act* specifically states that the 15 days starts when the landlord receives the forwarding address. The application for dispute resolution served by registered mail on the landlord on October 15, 2014 was not received by the landlord. Therefore, I find that the tenants have established a claim for return of the security deposit.

I also accept that the landlord has received the tenants' amended application for dispute resolution which was served on April 2, 2015. If the landlord fails to return the security deposit in full within 15 days of being served with the attached monetary order, the tenants will be at liberty to apply for double the amount.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end tenancy is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

If the landlord fails to pay the amount within 15 days of service of the order, the tenants will be at liberty to apply for doubling the amount of the security deposit.

This order is final and binding and may be enforced.

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 29, 2015

Residential Tenancy Branch

