



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The male Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted to the Residential Tenancy Branch on June 16, 2015 were sent to the Landlord on an unknown date. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 08, 2015 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that these documents were served to the Tenants by registered mail on July 08, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On August 11, 2015 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that these documents were served to the Tenants by registered mail on August 11, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On August 13, 2015 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that these documents were served to the Tenants by registered mail on August 13, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On July 09, 2015, August 12, 2015, and August 14, 2015 the Landlord submitted copies of evidence that had been previously submitted to the Residential Tenancy Branch. As this evidence has already been accepted as evidence, the additional copies do not need to be addressed.

On September 04, 2015 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that these documents were not served to the Tenants by registered mail on August 13, 2015. As this evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Background and Evidence

The Landlord and Tenants agree that:

- the tenancy began on June 01, 2014;
- a security deposit of \$750.00 was paid;
- the tenancy ended on June 01, 2015;
- the tenant provided a forwarding address, in writing, on June 01, 2015;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- the Landlord returned \$685.00 of the security deposit, by electronic transfer, on June 14, 2015.

The female Landlord stated that her husband initially offered to refund the security deposit when the rental unit was being inspected at the end of the tenancy, however the Tenants asked the Landlord to mail the refund to them.

The female Landlord stated that the full security deposit was not returned on June 14, 2015 because they were expecting an additional water bill, which the Tenants were obligated to pay as part of the tenancy agreement.

A series of emails were submitted in evidence, in which the parties discuss the need to pay a water bill that has not yet been issued.

In the emails the female Landlord:

- informs the Tenants she is waiting for the water bill before she refunds the security deposit;
- asks the Tenants if they want her to pay the water bill once it is received and to refund the "remaining monies" or if the Tenants want to pay the bill and provide proof of payment; and
- informs the Tenant, on June 08, 2015, that she will mail a cheque to the Tenants, in the amount of \$681.50, and will withhold \$75.00 "until the water bill

is taken care of" and that upon proof of payment she will forward the "remaining monies".

In an email response to the Landlord the male Tenant informs her that he wishes to pay the bill, as the account is in his name.

The female Landlord stated that she mailed a cheque to the Tenants, in the amount of \$685.00, on June 08, 2015 but it was returned by Canada Post.

The male Tenant acknowledged that the Tenants were required to pay for the water bill as a term of the tenancy, which was in his name. He stated that he had not received a final water bill prior to the end of the tenancy and had not, therefore, paid that bill.

The Landlord submitted a copy of a water bill, dated June 16, 2015. The male Tenant stated that the Tenants received this bill on June 23, 2015 and that the bill has been paid.

The Landlord and the Tenants agree that the Landlord sent \$75.00 the Tenant, by electronic transfer, on August 13, 2015. The female Landlord stated that this payment was made after she determined the water bill had been paid.

The Landlord stated that she refunded an additional \$10.00 to the Tenants in recognition of any interest that had accrued since the deposit was paid.

Analysis

On the basis of the undisputed evidence, I find that this tenancy ended on June 01, 2015; that the Landlord received a forwarding address for the Tenants on that date; that part of the security deposit was refunded on June 08, 2015; and the remainder of the security deposit was refunded on August 13, 2015.

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. I find that the Landlord failed to comply with section 38(1) of the *Act*, as she did not file an Application for Dispute Resolution and she did not fully repay the security deposit until more than 15 after the tenancy ended and the forwarding address was received.

Section 38(4) of the *Act* authorizes a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. After viewing the email communications between the parties, I find that the Tenants did not authorize the Landlord to retain a portion of the security deposit for the purposes of applying it to an unpaid water bill. Although the Landlord informed the Tenant of her intent to retain a portion of the security deposit until the issue with the outstanding water

bill had been resolved the Tenants did not, in my view, consent to that arrangement.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

The Residential Tenancy Branch establishes the amount of interest that is due on security deposits in any given year. As no interest is due on deposits paid in 2014, I find that the Landlord is not obligated to pay any interest on the security deposit paid by the Tenants.

I find the Tenants Application for Dispute Resolution has merit and that they are entitled to recover the \$50.00 fee paid to file this Application.

Conclusion

The Tenants have established a monetary claim of \$1,550.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the \$760.00 that has already been refunded to the Tenants.

On the balance of these calculations I grant the Tenants a monetary Order for \$790.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia 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: September 17, 2015

Residential Tenancy Branch

