



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OLC, 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, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, and to recover the filing fee from the Landlord for the cost of filing this application.

Tenant #1 stated that on June 27, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted to the Residential Tenancy Branch on July 06, 2015 were sent to the Landlord, via registered mail. She stated that one email, dated June 27, 2015, which was submitted to the Residential Tenancy Branch on July 06, 2015, was not served to the Landlord.

The Landlord acknowledged receipt of the documents served to him by the Tenants and they were accepted as evidence for these proceedings.

The Landlord submitted no documentary evidence.

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.

Preliminary Matter

In the Application for Dispute Resolution the Tenants declared they were seeking a refund of a \$200.00 "application deposit". At the hearing Tenant #1 stated that this claim is withdrawn.

Issue(s) to be Decided

Are the Tenants entitled to the return of security deposit?

Are the Tenants entitled to recover the fee for placing “stop-payments” on three post-dated cheques?

Background and Evidence

The Landlord and the Tenants agree that:

- the parties initially entered into a fixed term tenancy agreement that ran from August 01, 2013 until July 31, 2014;
- the Tenants agreed to pay monthly rent of \$2,000.00;
- a security deposit of \$1,000.00 was paid;
- the Tenants signed another document to indicate they were entering into another fixed term tenancy agreement that ran from August 01, 2014 until July 31, 2015;
- the Landlord never signed the second fixed term tenancy agreement
- this tenancy ended on April 30, 2015, although some personal property was left on the residential property for a few days after that date;
- a forwarding address for the Tenants was written on the final condition inspection report on April 30, 2015;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenants contend that since the Landlord never signed the second fixed term tenancy agreement, the original fixed term tenancy agreement reverted to a month-to-month tenancy agreement after July 31, 2014. The Landlord contends that the parties extended the fixed term of their tenancy agreement to July 31, 2015.

The Landlord and the Tenants agree that the Tenants told the Landlord he could deduct the cost of garbage removal from their security deposit refund providing he gave them the receipt for disposal costs, however he never provided receipts for those costs. At the hearing the Tenants agreed to reduce any award arising from these proceedings by \$100.00 in compensation for disposing of garbage left at the rental unit.

The Tenants are seeking compensation, in the amount of \$30.00, for the cost of placing a stop payment on three post-dated rent cheques.

The Landlord and the Tenants agree that when this tenancy ended the Landlord possessed post-dated rent cheques for May, June, and July of 2015. The parties agree that the Tenants did not ask for the return of the cheques. The Landlord stated that he attempted to cash the rent cheque for May and June of 2015, however the cheques were returned due to insufficient funds in the account.

The Landlord has not filed an Application for Dispute Resolution seeking compensation from the Tenants and he was not, therefore, permitted to discuss any financial claims he may have in regards to this tenancy.

Analysis

On the basis of the undisputed evidence, I find that this tenancy began on August 01, 2013; that it ended on April 30, 2015 pursuant to section 44(1)(d) of the *Residential Tenancy Act (Act)*; and that the Landlord received a forwarding address for the Tenant, in writing, on April 30, 2015. I find there is no need for me to consider whether the parties entered into a second fixed term tenancy agreement, as that matter is not relevant to the issues in dispute at these proceedings.

Section 38(1) of the *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.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received by the Landlord.

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 Tenants double the security deposit.

Section 38(4) of the *Act* authorizes a landlord may 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. As the parties did not agree on a specific amount to be deducted from the security deposit in compensation for disposal costs and the agreement to reduce the security deposit was contingent on the Landlord providing a receipt, which was not done, I find the Landlord did not have the right to retain any portion of the security deposit in accordance with section 38(4) of the *Act*.

Section 5 of the Residential Tenancy Regulations requires landlords to return post-dated cheques for any period after the end of the tenancy. I therefore find that the Landlord failed to comply with this section when he did not return the post-dated cheques for May, June, and July of 2015.

When making a claim for compensation the party making the claim has the burden of proving their claim, which includes establishing the amount of the loss or damage. In these circumstances the Tenants submitted no documentary evidence, such as a bank statement, to establish they paid \$30.00 to place a ``stop payment`` on the post-dated cheques the Landlord had in his possession. I therefore dismiss the Tenants` claim for the cost of placing a `stop payment`` on those cheques.

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

Conclusion

The Tenants have established a monetary claim of \$2,050.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. As the Tenants agreed, at the hearing, to reduce this award by \$100.00 in compensation for disposal costs, I grant the Tenants a monetary Order for \$1,950.00. In the event 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

