



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenants for a monetary order for the return of their security deposit including double the deposit amount. The hearing was conducted by conference call. The named tenants and the named landlord participated in the hearing. The respondent, W.G. testified that although she is named as landlord in the tenants' application, she is not the landlord; her husband, A.G. is the landlord and she acts as property manager. She said that her husband was not available to attend the hearing, but she has full authority to represent the landlord and attended as his representative.

The *Residential Tenancy Act* defines "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

The respondent has acted as agent and has exercised powers and performed duties under the tenancy agreement throughout the tenancy and I find that she has therefore been appropriately named as landlord in these proceedings. For convenience she will be referred to as the landlord in these reasons. The landlord testified that she and her husband were not served with the application, Notice of Hearing and tenants' evidence at the landlord's address for service. She said that she and her husband received the application and evidence at the address of the rental unit in August. Based on the landlord's acknowledgement at the hearing that the application for dispute resolution and documentary evidence were received by the respondents, I find that the application and evidence were sufficiently served on the respondents on August 20, 2015, being the 5th day after they were sent by registered mail.

Issue(s) to be Decided

Are the tenants entitled to the return of their security and pet deposits including double the amounts?

Background and Evidence

The rental unit is a house in Victoria. The tenancy began on June 1st, 2013 for a one year fixed term. The tenant, C.P. was one of two tenants named in the agreement. Monthly rent was \$2,475.00 payable on first day of each month. The tenants paid a security deposit of \$1,237.50 and a \$50.00 pet deposit on May 6, 2013. The landlord and the tenants named in this application entered into a second fixed term tenancy agreement for a one year term commencing June 1, 2014. Rent for the new term was \$2,525.00, payable on the first of each month, plus a \$50.00 monthly insurance charge levied because the tenant was operating a daycare out of the rental property. The agreement recorded the receipt of the security deposit and pet deposit under the previous tenancy agreement.

There is no record of a condition inspection conducted at the beginning of either the first or second terms of the tenancy.

The tenant testified at the hearing that she notified the landlord that the tenants would move out of the rental unit on June 30, 2015. The tenants moved out on July 1, 2015. They said that they participated in a move out inspection with the landlord, they received some document from the landlord and they provided the landlord with their

forwarding address in writing; the address given to the landlord was incorrect, but the tenants corrected the address in a later text message sent to the landlord. The tenants said they were not given a copy of the document at the time they moved out. The tenants did not authorize the landlord in writing to retain any part of the tenants' security deposit. The landlord mailed a condition inspection report to the tenants; according to the postmark on the envelope it was sent on July 29, 2015 and was received by the tenants on August 7, 2015. The landlord did not return any part of the tenants' security deposit. In the condition inspection report the landlord listed various amounts claimed by the landlord. The landlord said the amounts claimed exceeded the amount of the security deposit. The landlord sought payment of \$2,066.04. After deducting the tenants' deposits, the landlord claimed that the tenants owed the landlord \$778.54.

The landlord did not return the security deposit and he did not file an application for dispute resolution to claim the deposit. At the hearing the landlord testified that there were extenuating circumstances that delayed the landlord in filing an application to claim the security deposit. She said that the landlords had to attend a funeral and it has taken time to collect and prepare the evidence in support of the claim. She said that the landlord will shortly be ready to file an application for dispute resolution to claim a monetary award from the tenants for the cost of cleaning and repairs to the rental unit and the rental property, including the yard and garden.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit. There is no provision in the *Residential Tenancy Act* that permits an extension of the time period for either making a claim or returning the deposit. In this case the landlord has had more than five months to file an application for dispute resolution since the tenants provided their forwarding address to the landlord.

I am satisfied that the tenants provided the landlord with their forwarding address in writing, based upon the earlier discussion I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. The tenants' security and pet deposits total the sum of \$1,287.50. I grant the tenants' application and award them the sum of \$2,575.00. The tenants is entitled to recover the \$50.00 filing fee for this application for a total claim of \$2,625.00 and I grant the tenants a monetary order against the landlord in the said amount. 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: January 21, 2016

Residential Tenancy Branch

