



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 a hearing with respect to the tenant's application for a monetary order for the return of his security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant and the named landlord participated in the hearing. The landlord's daughter and son also attended and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit and pet deposit including double the amount?

Background and Evidence

The rental unit is a residence in Vancouver. There have been several previous dispute resolution proceedings regarding this tenancy. The tenancy began in October 2014 for a one year fixed term. Monthly rent was \$2,780.00 payable on first day of each month. The tenants paid a security deposit of \$1,390.00.00 and a pet deposit of \$1,390.00 at the start of the tenancy.

As recorded in a July 27, 2015 decision following a dispute resolution hearing, the tenants did not pay rent for June, 2015. On June 1, 2015 they wrote to the landlords to say that they intended to end the tenancy early and would vacate the rental unit by July 1, 2015. They told the landlords to apply their security and pet deposits to June rent. The landlords did not accept the tenants' proposal; they demanded payment of June rent and served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The tenants did not pay rent and they moved out of the rental unit on June 15, 2015.

The tenant sent the landlords a letter registered mail dated July 27, 2015. In the letter the tenants said:

Please forward one of our 2 deposits in the amount of \$1365 as required by Subsection 38 (1)(b) of the *Residential Tenancy Act* to the following mailing address:

The tenant provided his daughter's mailing address as the tenants' forwarding address. He went on to state in the letter as follows:

You have retained one of our deposits in the amount of \$1390 for June 1-15, 2015 to cover full and final payment of rent owing up to and including your June 15th termination of our lease agreement and or vacating of (address of rental unit)

Please forward the outstanding deposit in the amount of \$1365 (\$1390-\$25 for filing fee)

The tenant filed his application for dispute resolution on August 17, 2015. The landlords received the application and submitted their own evidence in reply. The tenant redacted his home address on the copy of the application that he served upon the landlords, but the landlords served their reply evidence to the forwarding address previously given by the tenant and it was received by the landlord.

In the landlords' documents and evidence they have asserted that the tenant failed to pay rent for the remainder of the fixed term tenancy agreement and that he failed to leave the rental unit properly cleaned and in good repair. The landlord said that he did not return the deposits because the tenant breached the tenancy agreement. The landlords claimed a loss of rental income of four months' rent and \$2,100.00 for cleaning and repairs. They said that they chose to keep the deposits and waive the remainder of their claims. The landlord made this offer to the tenant at the hearing, but it was rejected by the tenant.

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.

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

The landlords have not applied for dispute resolution to make a claim to retain the deposits or to make a monetary claim. 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 tenant claimed payment of double the amount of the security and pet deposits for a total claim of \$5,560.00. I find that the tenants authorized the landlords in writing to retain the sum of \$1,415.00 from their security deposit and pet deposit, being \$1,390.00 for half a month's rent and a further \$25.00 for one half the filing fee for a previous dispute resolution proceeding. The amount of the deposit that was not returned is the sum of \$1,365.00. I grant the tenant's application in the amount of double the portion of the deposit that the landlord was not authorized to retain and I award him the sum of \$2,730.00. The tenant has been partially successful on this application and he is entitled to recover \$50.00 of the \$100.00 filing fee for this application for a total claim of \$2,780.00. I grant the tenant 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 28, 2016

Residential Tenancy Branch

