



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The hearing process was explained and the parties were given the opportunity to ask questions about the process. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid?

Background and Evidence

The tenancy commenced on October 27, 2012. The tenants paid security deposit and pet deposits in the sum of \$450.00 and \$300.00 on October 17 and 27, 2014, respectively.

There was no dispute that the tenants gave the landlord notice to end the tenancy on July 30, 2015 and that the tenancy was to end effective August 31, 2015. The tenants paid rent for the month of August 2015.

A move-in condition inspection report was supplied as evidence. Both parties had attended that inspection.

The landlord said that on June 30, 2015, when the tenants said they would be moving out, she told the tenants they could meet on the last day of the tenancy to complete the move-out inspection report. A specific date and time was not provided to the tenants but the landlord expected the last day of the tenancy was to be August 31, 2015.

On August 29, 2015 the landlord received a text message from the tenants, informing the landlord the tenants had vacated. The landlord responded saying that she was then assuming they would not be able to do the inspection. The tenants replied that they had moved and asked if one of their parents could attend an inspection with the landlord. The landlord said that was not possible, that one of the tenants had to attend. As a

result an inspection did not take place and a date and time for an inspection was not given to the tenants.

The landlord submitted a copy of a final written notice of an inspection that was posted to the door of the rental unit on August 31, 2015; after the tenants had vacated.

The landlord confirmed that she received the tenants' written forwarding address on September 18, 2015. The landlord did not return the deposit within 15 days of receiving the address or make an application claiming against the deposit.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the landlord received the tenants' written forwarding address on September 18, 2015, the date confirmed by the landlord.

Section 35(2) of the Act provides:

Condition inspection: end of tenancy

- 35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
(a) *on or after the day the tenant ceases to occupy the rental unit, or*
(b) *on another mutually agreed day.*
(2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
(3) *The landlord must complete a condition inspection report in accordance with the regulations.*
(4) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
(5) *The landlord may make the inspection and complete and sign the report without the tenant if*
(a) *the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
(b) *the tenant has abandoned the rental unit.*

I find that the landlord did not schedule the move-out inspection with the tenants, by providing a specific date and specific time between 8 a.m. and 9 p.m., in accordance with section 16 of the Residential Tenancy Regulation. When the tenants offered to have a parent attend an inspection, as agent, the landlord refused that offer. During the hearing I explained that a tenant may have an agent attend the inspection on their behalf.

I find that the notice posted to the door of the rental unit on August 31, 2015 was not given to the tenants as they had vacated. The notice would be deemed served effective September 3, 2015.

As the landlord failed to provide the tenants with at least two opportunities to complete the inspection I find, pursuant to section 36 of the Act that the landlord extinguished the right to claim against the deposit for damage to the rental unit. The landlord could have made a claim against the security deposit for unpaid rent and, in that case, the pet deposit would need to have been returned to the tenants within 15 days.

As the landlord failed to return the deposits and did not submit a claim for any unpaid rent I find, pursuant to section 38(6) of the Act that the landlord must return double the \$450.00 security deposit and the \$300.00 pet deposit.

As the tenants' application has merit I find that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$1,550.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to return of double the security and pet deposits.

The tenants are entitled to recover the filing fee cost from the landlord.

This decision is final and binding and 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: April 08, 2016

Residential Tenancy Branch