Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenants for the return of their security deposit including double the deposit amount. The hearing was conducted by conference call. The tenants and the landlord participated in the hearing. The landlord was not properly named in the application for dispute resolution. The tenant incorrectly combined the landlord's names in the application. The landlord was served with the application and Notice of Hearing and he was able to respond to the claim. Based on the information provided at the hearing and in the documents filed by the parties I have amended the application to correct the landlord's name in the style of cause.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit including double the amount?

Background and Evidence

The rental unit is a residence in North Vancouver. The tenancy began on April 1, 2014 for a one year fixed term. Monthly rent was $3,275.00 payable on first day of each month. The tenants paid a security deposit of $1,637.50 on March 4, 2014.

The tenants testified that they moved out of the rental unit on March 30, 2015. The tenants said that they cleaned the rental and called the landlord to inspect the unit. The landlord attended at the rental unit on March 30th, performed an inspection of the rental unit. The tenant said they performed more cleaning and met the landlord at the rental unit later the same day. The tenant testified that the second meeting at the rental unit took place at 8:00 P.M. The tenant testified that at the second meeting the landlord asked for his forwarding address and he gave the landlord his business card with the

address of his business to be used as his forwarding address. The meeting with the landlord was confrontational and the tenants left soon after.

The tenants testified that the deposit was not returned to them and filed their application for dispute resolution on November 27, 2015. They served the landlord with the application and Notice of Hearing by registered mail sent on December 2, 2015.

The landlord testified at the hearing that the tenant confirmed an inspection time of 5:30 P.M. The landlord said that he attended and found that the house was not properly cleaned so he gave the tenant what he referred to as a second and final notice of inspection. The landlord said that when he returned for the second inspection nothing has changed and it was in the same condition as it was at the earlier inspection. The landlord testified that the tenant and the friend that was present refused to go through the inspection with him. The landlord's position at the hearing that the tenants were not entitled to the return of their security deposit because they refused to participate in the condition inspection. The landlord also said that the tenant refused to provide him with their forwarding address as required by the *Residential Tenancy Act*. The landlord testified that the address given by the landlord in his application is not the address where he resides.

The landlord said that the tenants failed to properly clean the rental unit and damaged the driveway. The landlord said at the hearing that he has filed his own claim against the tenants. His claim was filed not filed until March, 2016.

The landlord testified that the tenants did not provide the address of their new residence, although he did discover where they had moved and he knew the address of the tenant's business. He denied that the tenant gave him his business card at the move out inspection.

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.

The tenant testified that he gave the landlord his forwarding address at the time of move-out by handing the landlord his business card with the address of his business printed on it. The landlord's evidence about receiving the tenant's forwarding address was equivocal; first he said that the tenants did not comply with the requirement to provide their forwarding address because they did not give the landlord the new residential address where the tenants were moving. Later he denied receiving the landlord's business card, although he did acknowledge that he knew where the business was located and he was also aware of the tenants' new residential address. The tenant's evidence was direct and unequivocal; he said that he was not given a copy of a condition inspection report to sign and when the landlord asked for his forwarding address he handed him his business card. I accept and prefer the tenant's testimony that he provided his business address in writing to the landlord on March 30, 2015 by handing him his business card.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act*, the landlord did not file an application to make a claim against the deposit within the 15 day period and the doubling provision of section 38(6) therefore applies. The landlord argued that the tenants did not participate in a condition inspection as required by the *Act* and they have thereby forfeited their rights to the return of the deposit. I do not accept the landlord's submission on this point. The tenants did participate in a condition inspection on March 30th; however, they disagreed with the landlord's assessment of the condition of the rental unit. The landlord insisted that they should perform more cleaning before he re-inspected the unit. The landlord did not produce a copy of the condition inspection report and did not give the tenants the opportunity to sign the form to indicate whether they agreed or disagreed with the landlord's assessment of the condition of the rental unit at the time of the initial inspection. The tenants' obligation to participate in a condition inspection at the end of a tenancy, does not require the tenant to agree with the landlord's assessment of the condition of the rental unit or to perform additional cleaning and participate in further inspections as dictated by the landlord.

I find that the tenants did participate in a condition inspection. The landlord did not provide a copy of the condition inspection report after the first inspection. The landlord was not at liberty to unilaterally demand a re-inspection and I find that the tenants' refusal to participate in that process does not disentitle them to the return of their deposit.

I grant the tenants' application and award them the sum of $3,275.00, being double the amount of their original deposit of $1,637.50. The tenants are entitled to recover the $50.00 filing fee for this application for a total claim of $3,325.00 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: April 18, 2016

Residential Tenancy Branch