



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was a hearing with respect to the tenants' application for the return of the security deposit. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing. The tenant testified that the landlord was served with the application and Notice of Hearing by registered mail. The landlord acknowledged at the hearing that he received the documents from the tenant.

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 Abbotsford. The tenancy began on July 15, 2011. The initial monthly rent was \$1,600.00. The tenants paid a security deposit of \$800.00 and a pet deposit of \$800.00 at the beginning of the tenancy.

The tenants gave notice and moved out on July 14, 2016. They did not provide a forwarding address; they sent an e-mail to the landlord suggesting that he return their deposit by direct deposit. The tenants said that the landlord refused to return their deposits because the tenants did not remove some rocks and take down a fence. The tenant testified that they did remove the rocks and fencing and did pay an outstanding utility bill, but the landlord still has not return their deposits.

The landlord said at the hearing that the tenants failed to pay a water utility bill. He also said in an e-mail to the tenants that he is waiting for a quote to restore the backyard of the rental property to its former condition. The landlord did not submit any documentary evidence to support his testimony or to establish that there are unpaid utilities for which the tenants are responsible.

The landlord did not return the security deposit and he did not file an application for dispute resolution to claim the deposit.

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 tenants did not provide the landlord with their forwarding address in writing until they filed their application for dispute resolution and served it to the landlord. The application was filed August 31, 2016. The landlord has not responded to the application and he has not filed an application to claim the deposits. I find that the tenants are entitled to the return of their original deposit amounts as claimed in their application but not to an award of double the amounts because they did not provide their forwarding address in writing before making their application. I allow the tenants' claim in the amount of \$1,600.00 being the amount of their original deposits. The tenants are entitled to recover the \$100.00 filing fee for their application, for a total award of \$1,700.00. 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: March 2, 2017

Residential Tenancy Branch

