



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MNSD, O, OPL, OPM, FF

Tenant's application: MNSD

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing. The tenants served the landlord with their application by registered mail. The landlord sent the application to the tenants at the address they provided to him. Canada Post records provided by the landlord showed that the item was mailed on September 2, 2016. Delivery to the tenants was attempted and notice cards were left. The tenants did not pick up the registered mail and it was returned to the landlord. The landlord also sent the documents to the tenants by e-mail. According to the tenants they did not receive the registered mail and one of the e-mail addresses was incorrect, but the tenant could not say whether or not he received the documents sent to the correct e-mail address. The landlord sent the documents to the tenants at the address they provided. They may have failed to pick up the documents, but pursuant to section 90 of the *Residential Tenancy Act*, I find that they are deemed to have received the documents on the 5th day after mailing, which was on September 7, 2016.

In his application for dispute resolution the landlord requested remedies, including an order of possession; the tenancy has ended and the tenants moved out. There is no basis for the landlord's claims for a remedy apart from the claim for a monetary award and retention of the security deposit and those other claims are dismissed without leave to reapply. The landlord acknowledged that he received the tenants' application seeking the return of their security deposit.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and an order to retain all or part of the tenants' security deposit and pet deposit?

Are the tenants entitled to the return of their security deposit and pet deposit, including double the amount of the deposits?

Background and Evidence

The rental unit is a house in Langley. The tenancy started July 1, 2014. The monthly rent was \$1,700.00. The tenants paid an \$850.00 security deposit and an \$850.00 pet deposit at the start of the tenancy.

On or about July 13, 2016 the landlord advised the tenants that he intended to sell the rental property and would be giving the tenants a two month Notice to End Tenancy in the future, when he had concluded an agreement with a purchaser.

The tenants were concerned about finding a new rental property that would accept pets and was close to school. The tenants told that landlord they intended to start looking and asked for a reference. The landlord said in a text message to the tenants that they did not have to worry about giving him a notice and they were free to move when they could.

The tenants did find new accommodation and on July 23, 2016 they advised the landlord by text that they were moving at the end of the month. They paid rent for July and moved out before July 31, 2016, but did not complete moving and cleaning until August 1, 2016. The landlord testified that the tenants did not properly clean the house before they moved out. The landlord's realtor had to clean the house to make it presentable to show. The landlord hired a cleaner to clean the house. He testified that the tenants agreed to a \$250.00 deduction from their security deposit to pay for cleaning. On August 6, 2016 the tenants responded to the landlord's text message request and provided him with their new address and phone number. The landlord said he would come to their new address to pick up the keys.

The landlord said in a text message that he would transfer the tenants deposit, less a cleaning charge of \$250.00. He said that he did transfer \$600.00 to the tenants, but later cancelled the transaction. He said that he cancelled the transaction because he received advice from the Residential Tenancy Branch that he did not need to return the deposit if he filed an application for dispute resolution. The landlord advised the tenants that he should not have to absorb an entire month's loss of rent; he said the tenants should: "take half the hit" and the landlord should keep the \$850.00 security deposit and return \$600.00 of the pet deposit, keeping \$250.00 for cleaning costs.

The tenants did not agree with the landlord's position that they should be responsible for paying an additional half month's rent. They testified that the landlord notified them in a telephone call that he intended to sell the house and would be giving them a Notice to End Tenancy. The tenants told the landlord that they planned to start looking for new rental accommodation because they anticipated difficulty finding a place that would accept pets and would not require them to move their child to a new school. The

tenants said the landlord assured them that he would give them a good reference and that they did not have to worry about giving him notice. They referred to the landlord's text message on July 23, 2016 wherein he said:

On second thoughts don't even worry about the notice. Move when you can.
Don't worry about the notice.

The tenants acknowledged at the hearing that they did agree that they were responsible for cleaning costs and they did tell the landlord that he could deduct \$250.00 from their security deposit.

Analysis

In July the landlord informed the tenants of his plans to sell the rental property. The tenants promptly told the landlord they planned to start looking for other accommodation. Had the tenants not decided to move without first receiving a two month Notice, the landlord could not have ended the tenancy before September 30, 2016 and he would have been required to pay the tenants the equivalent of one month's rent. I find that the landlord authorized the tenants plan to move and he expressly waived the requirement that the tenants provide one month's notice in writing. The tenants accepted and acted upon the landlord's permission and the landlord may not now change his position to claim compensation for their failure to give proper notice when he waived that obligation. I therefore dismiss the landlord's claim for compensation in the amount of \$850.00.

The tenant's agreed that the landlord was entitled to recover cleaning costs of \$250.00 to be retained from their security deposit. The actual costs were \$283.50 and I find that the landlord is entitled to an award in the amount of \$283.50 for his actual cleaning costs. He is also entitled to recover the filing fee for his application, for a total award of \$383.50.

With respect to the tenants' claim, 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's provided the landlord with their forwarding address at the landlord's request on August 6, 2016. The landlord acknowledged that he received their address 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 landlord did not file his application to claim the tenants' security deposit until August 30, 2016, which was more than 15 days after the landlord received the tenants' forwarding address and the tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act*; the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$3,400.00, being double the amount of their original deposits. The tenants' did not claim a filing fee with respect to their application and I make no order with respect to the filing fee. The landlord has been awarded the sum of \$383.50 and that amount is set off against the award in favour of the tenants, leaving a balance due to the tenants of \$3,016.50 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.

Conclusion

The landlord has been awarded the sum of \$383.50 which has been set off against the award to the tenants, leaving a net amount due to the tenants of \$3,016.50.

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

