



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 107 1932 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing and represented the other tenant. An agent for the landlord also attended.

The landlord's agent testified that he has not been served with the Tenant's Application for Dispute Resolution or evidence, and received notice of this hearing by way of email directly from the Residential Tenancy Branch. The tenants have provided proof that the landlord was served with the Hearing Package by registered mail on July 19, 2018, but it was returned to the tenants unclaimed. The *Residential Tenancy Act* specifies that documents served in that manner are deemed to have been received 5 days later. I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions. All evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenant testified that since filing the Tenant's Application for Dispute Resolution the landlord has returned to the tenants the relief claimed for the last month of rent and the security deposit. The tenants' claim is for double the amount of the security deposit and recovery of the filing fee.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the security deposit, less the amount returned, and recovery of the \$100.00 filing fee?

Background and Evidence

The tenant testified that this month-to-month tenancy began on February 1, 2014 and ended on June 2, 2018. Rent in the amount of \$1,400.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord at that time collected a security deposit from the tenants in the amount of \$700.00 and no pet damage deposit was collected. The rental unit is a suite in the upper level of the rental home, and 2 other suites are also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord had served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property on March 31, 2018 by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated March 31, 2018 and contains an effective date of vacancy of May 31, 2018. The reasons for issuing it state:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative.

The landlord had agreed to allow the tenants to remain in the rental unit for the extra 2 days, and the tenants paid rent in full for the last month of the tenancy.

The tenant further testified that on June 20, 2018 the tenant sent to the landlord a letter containing the tenants' forwarding address by registered mail. A copy of the letter and a Canada Post tracking document have been provided as evidence for this hearing which shows that the registered mail was claimed by the landlord on June 20, 2018. The letter requests return of rent paid for May and the security deposit, for a total of \$2,100.00.

After filing this application, the tenants received a cheque from the landlord in the amount of \$2,100.00 by regular mail, and a copy of the cheque has been provided for

this hearing. It is dated June 20, 2018 but the tenant testified that it wasn't received until August 10, 2018, and the post-mark on the envelope is dated August 8, 2018. The tenant emailed the landlord, but received no response. The tenant emailed the landlord again after the Hearing Package was returned unclaimed, and received no response.

The tenants claim doubling of the security deposit and recovery of the \$100.00 filing fee.

The landlord's agent testified that the tenants were already tenants in the rental home when the landlord purchased the property.

The landlord's agent normally writes the cheques and specifically recalls writing 3 cheques to the tenants who resided in the rental house. The cheques are then signed by the owner and mailed and the landlord's agent does not know why the tenants did not receive the cheque sooner. The landlord had the tenants' forwarding address by email or text messaging prior to receiving it by registered mail.

The landlord's agent agrees that the tenant sent emails about the deposit and last month of rent, and was told by the owner that it was already taken care of.

The landlord's agent also agrees that the tenants were permitted to move out a few days after the effective date of the landlord's notice to end the tenancy.

Analysis

The *Residential Tenancy Act* states that a landlord must either return a security deposit in full to a tenant or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, I am satisfied that the landlord received the tenant's forwarding address in writing on June 20, 2018, and the tenancy ended on June 2, 2018. The cheque that the landlord sent to the tenants is dated June 15, 2018, but the tenant testified it was not mailed until August 8, 2018 according to the post-mark on the envelope, and the landlord sent it by regular mail. The landlord's agent could not dispute that and does not know why it wasn't sent earlier, but was told after receiving emails from the tenants that the matter had been taken care of, and did not respond to the tenants' emails.

It is very easy to back-date a cheque, and I accept the undisputed testimony of the tenant that the envelope the cheque arrived in is post-marked August 8, 2018, well beyond 15 days from the date the tenancy ended or the date the landlord received the

tenants' forwarding address. In the circumstances, I am satisfied that the landlord failed to comply with the *Act* by failing to return the security deposit to the tenants within 15 days of receiving the tenants' forwarding address in writing and there is no evidence of the landlord making an application for dispute resolution claiming against the security deposit, and I grant a monetary order in favour of the tenants for \$700.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

This order is final and binding and may be enforced.

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: November 20, 2018

Residential Tenancy Branch