



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PACIFIC REALTY CORP.
GREEN TEAM REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security and pet damage deposits (collectively "deposits"), pursuant to section 38.

"Tenant MC" did not attend this hearing, which lasted approximately 22 minutes. The individual landlord AZ ("landlord") and tenant AS ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the agent for the two landlord companies named in this application and that she had permission to speak on their behalf (collectively "landlords"). The tenant confirmed that she had permission to represent tenant MC at this hearing (collectively "tenants").

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' written evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the name of the landlord as a landlord-respondent and to leave and clarify the names of the two landlord companies that were originally named in this application. The landlord consented to these amendment requests by the tenant.

Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017. Monthly rent in the amount of \$4,600.00 was payable on the first day of each month. A security deposit of \$2,300.00 and a pet damage deposit of \$2,300.00 were paid by the tenants. The landlords sent a cheque for \$3,970.00 as a partial return from both deposits to the tenants on September 18, 2018 by way of registered mail, which was received by the tenants on September 20, 2018, but not cashed. A written tenancy agreement was signed by both parties. No move-out condition inspection report was completed for this tenancy. A written forwarding address was sent by email by the tenants to the landlords on July 31, 2018. The landlords received the email and used the address to mail the cheque for the partial return of the deposits to the tenants. The landlords did not have written permission to keep any amount from the tenants' deposits. The landlords did not file an application for dispute resolution to retain any amount from the deposits.

The landlord stated that the tenants vacated the rental unit on August 9, 2018, while the tenant claimed it was August 10, 2018. The landlord said that she first sent a cheque for the partial return of the tenants' deposits of \$3,970.00 to both tenants probably on August 28, 2018, by regular mail, but it was not cashed so it was cancelled by the landlords. The tenant said that she did not receive this first cheque. The landlord claimed that a move-in condition inspection report was completed for this tenancy and a copy was sent to the tenants. The tenant said that she did not receive a copy of the move-in condition inspection report.

The tenants seek a return of double the amount of both deposits of \$4,600.00, totalling \$9,200.00. The landlords dispute this claim. The landlord stated that she made

deductions from the deposits for a lack of yard work by the tenants and the dog fence that was built by the tenants without the landlords' permission.

Analysis

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended by August 10, 2018. The tenants provided a written forwarding address by way of an email, which was received by the landlords on July 31, 2018. Although email is not permitted by section 88 of the *Act*, I find that the landlords were sufficiently served as per section 71(2)(c) of the *Act*, with the tenants' forwarding address because the landlords confirmed receipt of this email and acted on it by sending a cheque for the partial return of the deposit to the tenants, at that address.

The tenants did not give the landlords written permission to retain any amount from their deposits. The landlords did not return the full deposits or make an application for dispute resolution to claim against the deposits. Even though the landlords mailed a partial return cheque that was not cashed by the tenants, it was not the full amount, and it was beyond the 15-day period, when mailed on both August 28, 2018 and September 18, 2018. The landlords' right to claim against the deposits for damages was extinguished for failure to conduct a move-out condition inspection and report, as required by section 36 of the *Act*.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security and pet damage deposits of \$4,600.00, totalling \$9,200.00.

I order the tenants to either destroy or return the landlords' cheque for \$3,970.00, that is still currently in the tenants' possession, as confirmed by the tenant during the hearing.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$9,200.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 07, 2019

Residential Tenancy Branch