



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for return of double the amount of the security deposit, and to recover the filing fee from the landlords for the cost of this application.

The parties all attended, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

During the course of the hearing, it was determined that the tenants did not have all pages of the evidence package provided by the landlord. With the consent of the parties, all evidence received except for the character letters on behalf of the landlord is considered in this Decision. All other information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to return of the security deposit, or double the amount of the security deposit?

Background and Evidence

The parties agree that a Tenancy Agreement was prepared and signed by the parties on October 9, 2010, and a security deposit in the amount of \$450.00 was paid to the landlords on that date. The tenancy was to run on a month-to-month basis commencing October 25, 2010 and rent was \$900.00 per month payable in advance on the 1st day of each month, and the tenants were to pay a pro-rated amount of \$210.00 on October 24, 2010 for the month of October.

The tenants testified that when they viewed the rental unit, prior to signing the tenancy agreement or paying the security deposit, they advised the landlords that the female tenant would be running a day care at the rental unit. A week after the tenancy

agreement was signed and the security deposit paid, the landlord called the tenants stating that she was not insured for day care and stated that if the tenant wasn't insured for a day care, she should look into it. The tenant looked into it by calling an insurance company who wanted more money for the insurance than the tenant could afford. She advised the landlord that she would not be getting such insurance, and the landlord stated she was not comfortable renting it to the tenants and she would refund the deposit. The tenant stated that if it's a problem, the tenants would look for something else. They found something else and sent a letter to the landlord on October 19, 2010 by registered mail which contained the tenant's forwarding address. A copy of that letter was provided in advance of the hearing. No portion of the security deposit has been received from the landlords.

The female landlord testified that she had asked the tenant if the landlord would have any responsibility for the daycare and she replied that there was no responsibility on behalf of the landlord. The landlord told the tenant she would look into it. She also confirmed that when the tenants stated they weren't going to rent if they couldn't have the daycare, the landlord told them she would refund the security deposit once the unit was rented. The rental unit was rented on October 24, 2010. The landlord called the tenant on October 25, 2010 and the tenants' daughter answered the phone. The landlord could hear the male tenant tell his daughter to tell the landlord that her mother was not available. The daughter told the landlord she would have her mother return the call, but no call was received.

The landlord further testified that she contacted the Residential Tenancy Branch, and an information officer told her that once the tenancy agreement was signed, the contract was entered into and the tenants were responsible for the rent.

When questioned about the tenancy agreement, the landlord confirmed that the agreement says nothing about a daycare with or without insurance however the landlord discovered that her insurance would not cover the unit if there was a daycare. She also stated that she had every intention of returning the security deposit but wanted to confirm the address of the tenants.

Analysis

The *Residential Tenancy Act* states that:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Therefore, I agree with the landlords that information they received from the Residential Tenancy Branch is correct; the tenants would be liable to pay the rent if the parties did not agree to cancel the tenancy agreement. However, the *Act* also states that:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the tenancy ended when the landlord re-rented the unit on October 24, 2010. The landlords received the tenants' forwarding address sometime between October 19, 2010 when the letter requesting the security deposit was written, and November 9, 2010 when the tenants applied for dispute resolution. The landlords did not make an application for dispute resolution claiming against the security deposit within the 15 days permitted under Section 38 and did not return the security deposit within that time. The consequence for failing to comply with Section 38 (1) is set out in Section 38 (6):

38 (6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the evidence of the landlord that she contacted the Residential Tenancy Branch who told her about her right to claim rent, but I do not accept that the information officer told her that she could keep the security deposit without making an application for dispute resolution. The landlord also testified that she did not know about Section 38 and apologized for keeping the security deposit. I am enclosing a booklet entitled "Residential Tenancy Act – A Guide for Landlords and Tenants in British Columbia" to assist the landlords with future tenancies.

Conclusion

For the reasons set out above, I hereby grant to the tenants a monetary order in the amount of \$900.00, being double the amount of the security deposit. The tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application, and I grant an order pursuant to Section 67 of the *Residential Tenancy Act* for the balance of \$950.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement 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 18, 2011.

Residential Tenancy Branch