



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for the return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenants' agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to recover the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on July 14, 2010 and ended on August 29, 2012. Rent for this unit was \$640.00 per month due on the first day of each month in advance. The tenants paid a security deposit of \$320.00 on July 14, 2010.

The tenants' agent testifies that the tenants gave the landlord their forwarding address in writing on August 29, 2012 on the move out condition inspection report. The tenant's agent testifies that the landlord has failed to return the security deposit within the 15 allowable days and the tenants now seek to recover double the deposit. The tenants' agent testifies that the tenants did receive a cheque for \$320.00 on September 26, 2012 which was dated September 18, 2012. The tenants' agent testifies the tenants had contacted the landlord about the security deposit and were told conflicting stories. They were told the owners were on vacation and it would be returned when they came back and they were also told that the address left by the tenants was not clear and the first cheque had been sent to a different number.

The landlord testifies that the owners did send out a cheque the first week of the month and when the tenant called about the security deposit the landlord stated he would look into it. The landlord testifies he then found out the owners were on vacation. The landlord testifies he spoke to the person who issued the cheques and they told the landlord that the last number of the tenants address looked like a six instead of a five and the cheque could have been sent to the wrong address. They reissued another cheque on September 18, 2012 but the old cheque was never returned.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on August 29, 2012 and the tenancy ended on

that date. As a result, the landlord had until September 13, 2012 to return the tenants security deposit. I find the tenants address on the move out inspection report is clear as to the numbers recorded as the address and if the landlords did send a cheque in error to the wrong address then this is not the fault of the tenants. Consequently, I find the landlord did not return the security deposit until September 18, 2012 and the tenants have established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act*. As the tenants have received a cheque from the landlord for \$320.00 I order the landlord to pay the doubled portion of the security deposit.

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenants are entitled to a Monetary Order for the sum of **\$370.00**.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$370.00**. The order must be served on the Respondent and is enforceable through the Provincial Court 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: December 13, 2012.

Residential Tenancy Branch