



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit and pet damage deposit, doubled, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue—The landlords both appeared and the hearing proceeded, with no issues being raised about the service of the hearing documents to the landlords. At the conclusion of the oral evidence, the landlord TD raised the issue that they had not been properly served with the Notice of Hearing documents and the tenants' application for dispute resolution. In explanation, the landlord said that the hearing documents went only to the landlord JD's place of employment and that he did not sign for the document.

In response to my question, the tenant AK said she sent both landlords their application for dispute resolution and Notice of Hearing via registered mail to their respective places of employment; however the registered mail for landlord TD was returned to the tenants, with notification that the envelope was refused. The registered mail to the landlord JD was accepted and signed for. In further explanation, the tenant submitted that the

landlords refused to give them their, the landlords, their forwarding address, and that through research, the tenants located the landlords' respective places of employment.

The landlord further submitted that she was not given adequate time to prepare her evidence putting forth her reasons for not returning the security deposit, alleging that the short time prejudiced the landlords' position that the tenants are not entitled to their security deposit and pet damage deposit.

As the landlords' were both present at the hearing and as the landlords' did not object to or request an extension of time to respond the tenants' application at the beginning of the hearing, I did not consider their objections. I would note that as will be explained, the lack of evidence from the landlords would not have made an impact on this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order, which includes their security deposit, and to recover the filing fee?

Background and Evidence

The parties agree that this tenancy began on July 1, 2010 as per the tenancy agreement, not submitted into evidence, that the tenants moved in a week or so earlier, that the tenancy ended on August 2, 2012, monthly rent was \$1100, and a security deposit of \$550 and a pet damage deposit of \$200 was paid by the tenants at the beginning of the tenancy.

The tenant submitted that she offered to give the landlords their written forwarding address at the end of the tenancy and the landlord said it was not necessary as there were no issues with the rental unit and that she would drop off the deposits at the tenant's place of employment.

The tenant stated that the landlords failed to return their security deposit and pet damage deposit, at which time the male tenant delivered their written forwarding address by leaving it with the landlord.

The tenant stated that the landlords have not returned their security deposit or pet damage deposit and are seeking monetary compensation of \$1661.04, which is comprised of the security deposit of \$550, doubled, their pet damage deposit of \$200,

doubled, interest on those amounts in an unknown amount, registered mail costs of \$11.04, and time and fuel for \$30.

The landlord acknowledged receiving the tenants' written forwarding address in mid August, 2012, have not returned the security deposit and pet damage deposit to the tenants, and that they have not filed an application for dispute resolution claiming against the deposits. The landlord stated that they are entitled to keep the tenants' security deposit and pet damage deposit due to alleged rent issues and damage to the rental unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit and pet damage deposit has been extinguished, a landlord is required to either return security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In the case before me, the undisputed evidence shows that the tenancy ended on August 2, 2012, that the landlord received the tenants' written forwarding address in mid August 2012, the landlords have not applied for dispute resolution claiming against the security deposit and pet damage deposit, and have not returned any portion of the tenants' security deposit and pet damage deposit. The landlords were therefore required by the Act to either return the tenants' security deposit and pet damage deposit or to file their own application for dispute resolution claiming against the deposit by the end of August 2012.

I therefore grant the portion of the tenants' application for dispute resolution and order that the landlords pay the tenants double their security deposit and pet damage deposit.

I grant the tenants recovery of their filing fee of \$50.

I dismiss the portion of the tenants' application seeking interest, as the deposit interest rate has been 0% since 2009. I also dismiss the tenants claim for registered mail costs

and costs for time and fuel as I find the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee.

Due to the above, I grant the tenants a monetary award of \$1550, comprised of their security deposit of \$550, doubled to \$1100, their pet damage deposit of \$200, doubled to \$400, and the filing fee of \$50.

Conclusion

The tenants are entitled to a monetary award of \$1550. I therefore grant the tenants a final, legally binding monetary order in the amount of \$1550, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenant this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

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* and is being mailed to both the applicant and the respondent.

Dated: October 04, 2013

Residential Tenancy Branch