



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 as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for a monetary order for a return of their security deposit, doubled and for recovery of the filing fee paid for this application.

The tenants, their legal counsel, and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue with regard to service of the evidence or the tenants' application.

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

I have reviewed all oral and documentary evidence 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.

Issue(s) to be Decided

Are the tenants entitled to a monetary order comprised of their security deposit, doubled and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on July 1, 2013, ended on March 5, 2014, monthly rent was \$900, and the tenants paid a security deposit of \$450 at the beginning of the tenancy.

The undisputed evidence also was that the landlord has returned \$157.50 from the security deposit, with a cheque dated March 24, 2014.

The tenants gave evidence that the landlord was provided the tenants' written forwarding address in on March 10, 2014, sent via email.

The tenants' legal counsel submitted that the tenants met with the landlord on March 24, 2014, for the purpose of gathering some items and picking up the security deposit from the landlord. Instead of being given the full security deposit, the landlord had made deductions for a prorated rent for 5 days in March and for utilities costs. The legal counsel pointed out that the landlord has not made an application claiming against the security deposit and that the tenants did not give written permission to the landlord to retain any portion of the security deposit.

Landlord's response-

The landlord submitted that the tenants provided an incomplete forwarding address, as the postal code was not included.

The landlord submitted further that he was entitled to retain the portion of the security deposit as he did, since the tenants owed for prorated rent and utilities under the tenancy agreement. The landlord submitted further that he met the timelines as required by the Act in dealing the tenants' security deposit, as the balance was sent within 15 days of receiving the tenants' forwarding address.

In response to my question, the landlord confirmed that he looked up the tenants' postal code to complete the address when he returned the balance of the security deposit and that the parties' usual method of communication was primarily through email.

The landlord's relevant documentary evidence included, but was not limited to, copies of the utilities bills, text message communication, and the written tenancy agreement.

Analysis

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 has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposits 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 and pet damage deposit, pursuant to section 38(6) of the Act.

I do not find the tenants' right to a return of their security deposit has been extinguished in this case and the evidence shows that the tenants have not given authority to the landlord to retain their security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on March 5, 2014, when the tenants vacated the rental unit, and that the landlord received the tenants' forwarding address via email communication on March 10, 2014.

Additionally, even though the tenants communicated their forwarding address in an email transmission. I accept that this method of communication was the preferred method of communication between the parties, as confirmed by the landlord.

Although section 88 of the Act does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenants' forwarding address through the March 10, 2014, email to the landlord, with the landlord's confirmation, sufficiently served, pursuant to section 71 of the Act.

I also do not accept the landlord's argument that the address was so incomplete he could not use this address to return the security deposit, as this was the address used to return the balance of the security deposit after he looked up the postal code.

Due to the above, I find the landlord was obligated to return the tenants' security deposit, in full, or make an application for dispute resolution claiming against the security deposit by March 25, 2014. In contravention of the Act, the landlord made a deduction from the tenants' security deposit before returning a portion, without filing an application.

I therefore find the tenants are entitled to a total monetary award of \$792.50, comprised of their security deposit of \$450, doubled to \$900, less the amount previously returned

to the tenants, or \$157.50 and the filing fee paid for this application of \$50, which I have awarded them for due to their successful application.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for monetary compensation is granted as they are awarded a monetary order for \$792.50.

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: February 2, 2015

Residential Tenancy Branch

