



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated July 09, 2016 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

Both Tenants attended the hearing. The Landlord was represented at the hearing by A.T. All parties giving evidence provided a solemn affirmation.

At the outset of the hearing, the Tenants testified the Application package, which included the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on July 14, 2016. The Landlord acknowledged receipt on that date. The Landlord did not submit any documentary evidence.

All parties were represented at the hearing and were prepared to proceed. Neither party raised any issues with respect to service or receipt of the above documents.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The Tenants submitted documentary evidence outlining the terms of the tenancy agreement between the parties. The documents indicate the tenancy began on June 24, 2011, and ended by agreement on June 07, 2016. Although the Tenants provided a copy of a Mutual Agreement to End a Tenancy, dated April 25, 2016, this document was not signed by the Landlord. However, on behalf of the Landlord, A.T. confirmed the Landlord agreed to end the tenancy early as a favour to the Tenants. In any event, at the end of the tenancy, rent in the amount of \$1,600.00 per month was due on or before the first day of each month. The Tenants paid a security deposit of \$762.50 at the beginning of the tenancy.

The Tenants provided oral testimony and documentary evidence in support of their claims. First, the Tenants testified that their forwarding address was provided to the Landlord in writing on May 09, 2016, but that the security deposit of \$762.50 has not been returned. In support, the Tenants submitted a copy of an email dated May 09, 2016, which included the Tenants' forwarding address.

In reply, A.T. stated the security deposit was not returned because of damage to the rental unit. Specifically, A.T. advised the Landlord incurred expense to repair holes and repaint walls in the rental unit.

Second, the Tenants submit they are entitled to the return of a \$75.00 deposit they paid for a second access FOB, which was returned to an agent of the Landlord during an end of tenancy condition inspection on June 04, 2016.

In reply, A.T. testified that all tenants are provided with one access FOB per bedroom in each unit. The Tenants in this case were provided with one access FOB with the rental unit. A.T. confirmed the Tenants requested a second FOB, which he obtained for them. A.T. conceded the Tenants paid \$75.00 but that this amount was to purchase the FOB, not as a deposit.

Third, the Tenants testified they are entitled to \$1,226.67 for pro-rated rent for the period from June 08 to 30, 2016. They stated rent was paid by post-dated cheques of \$1,600.00, and that the Landlord cashed their cheque for rent for June 2016. In support of this aspect of their claim, the Tenants submitted into evidence a copy of an email dated May 08, 2016, which stated: "Within 2 weeks of walk thru, we will return your security deposit + pro-rated amount of \$1600 (June Rental) to you."

In reply, A.T. testified that the parties entered into a fixed term agreement that was to end June 30, 2016, but that the Landlord permitted the Tenants to vacate the rental unit early on June 07, 2016, as a favour to them.

Finally, the Tenants claimed they are entitled to the sum of \$186.67, pursuant to an agreement with A.T., the Landlord's representative. In support, the Tenants submitted a copy of an email dated May 8, 2016, which states: "as a token of our appreciation, we will do a 50/50 split on the said \$373.33 amount."

In reply, A.T. agreed that this was agreed to before these arbitration proceedings were commenced.

The Tenants also wish to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenants' claim for the return of the security deposit, section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

In this case, the Tenants provided oral testimony and documentary evidence confirming the Landlord was provided with a forwarding address in writing on May 09, 2016, and that the tenancy ended by agreement on June 07, 2016. On behalf of the Landlord, A.T. confirmed the security deposit was retained due to damage in the rental unit.

Pursuant to section 38(1) of the *Act* and the agreement to end the tenancy early, the Landlord had until June 22, 2016 to return the security deposit or file an application for dispute resolution. The Landlord has done neither.

Section 38(6) of the *Act* stipulates that, if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit. This is repeated in Residential Tenancy Branch Policy Guideline 17(B)(11), which states:

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Accordingly, I find the Tenants are entitled to the return of double the security deposit retained by the Landlord, or \$1,525.00 (\$762.50 x 2).

With respect to the Tenants' claim for the return of a \$75.00 deposit for an access FOB, which was returned to the Landlord at the end of the tenancy, I find it is more likely than not that the payment was a deposit and not a purchase of the FOB, as alleged by the Landlord's agent, A.T. Accordingly, I find the Tenants have demonstrated an entitlement to recover \$75.00 from the Landlord.

With respect to the Tenants' claim for pro-rated rent for the period from June 08-30, 2016, I find that the tenancy ended by agreement on June 07, 2016, and that the Landlord agreed to refund the pro-rated balance to the Tenants in an email dated May 08, 2016. The Tenants have demonstrated an entitlement to recover \$1,226.67 (($\$1,600.00/30$ days) x 23 days).

With respect to the Tenants' claim to recover half of the rent of \$373.33 for the period from June 01-07, 2016, I find that the Landlord agreed to split this amount with the Tenants, as confirmed in the email dated May 08, 2016. Accordingly, I find the Tenants are entitled to recover \$186.67 from the Landlord.

Having been successful, I also find the Tenants are also entitled to recover \$100.00 from the Landlord in satisfaction of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the tenant a monetary order in the amount of \$3,113.34, which has been calculated as follows:

Claim	Amount allowed
Security deposit (x2):	\$1,525.00
FOB deposit:	\$75.00
Pro-rated rent (June 08-30, 2016):	\$1,226.67
Half rent (June 01-07, 2016):	\$186.67
Filing fee:	\$100.00
TOTAL:	\$3,113.34

Conclusion

The Tenants are granted a monetary order in the amount of \$3,113.34. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 11, 2017

Residential Tenancy Branch