



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST PACIFIC PROPERTY SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated June 21, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- 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.

The Tenants were both represented at the hearing by R.S. The Landlord was represented at the hearing by L.A., an agent. Both R.S. and L.A. provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, R.S. testified that the Application package was served on the Landlord by registered mail. L.A. acknowledged receipt on behalf of the Landlord. The Tenant also submitted a further one-page document, which was received at the Residential Tenancy Branch on November 9, 2017. The Tenant confirmed the type-written document was not served on the Landlord. On review, the document merely confirmed the Tenants received the deposits on June 21, 2017, and indicated an intention to proceed with the hearing. Although not served on the Landlord in accordance with the Rules of Procedure, I find there is no prejudice to the Landlord in proceeding with the hearing. The Landlord did not submit documentary evidence in response to the Tenants' Application.

No further issues were raised 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.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on December 1, 2015, and ended on April 30, 2017, at which time the Tenants vacated the rental unit. Rent was due in the amount of \$950.00 per month. The Tenants paid a security deposit of \$475.00 and a pet damage deposit of \$475.00.

On behalf of the Tenants, R.S. testified that the Tenants provided their forwarding address in writing by email on May 16, 2017. A copy of the email was included with the Tenants' documentary evidence. L.A. replied the following day and stated:

I will call you or email you when I have the security deposit chq. done up & you can let me know if you are going to pick it up or if I am to mail it!

[Reproduced as written.]

On behalf of the Tenants, R.S. testified further that the Tenants did not receive the deposits. Accordingly, the Tenants sent the Landlord a fax on June 1, 2017, again requesting the return of the deposits. During the hearing, L.A. acknowledged receipt of the fax from the Tenants. R.S. confirmed the deposits were received by the Tenants on June 21, 2017.

Analysis

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

Section 38(1) of the *Act* requires a landlord to repay the deposits or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, R.S. testified, and I find, that the Landlord received the Tenants' forwarding address in writing on May 16, 2017. Accordingly, the Landlord had until May 31, 2017, to either repay the deposits to the Tenants or make a claim against them by filing an application for dispute resolution. The Landlord did neither. Further, the undisputed evidence of R.S. is that the deposits were not received until June 21, 2017.

Accordingly, I find the Tenants are entitled to recover double the amount of the deposits, pursuant to section 38(6) of the *Act*.

Policy Guideline 17(C)(5) illustrates the ways in which deposits may be doubled. In this case, I find that Example A is most applicable. It states:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for an order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

[Reproduced as written.]

Following this example, I find the Tenant is entitled to a monetary award of \$950.00, which has been calculated as follows:

$$(\$950.00 \times 2) - \$950.00 = \$950.00$$

I also find the Tenants are entitled to recover 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 \$1,050.00, which is comprised of \$950.00 pursuant to section 38 of the *Act* and \$100.00 in recovery of the filing fee paid to make the Application.

Conclusion

I grant the Tenants a monetary order in the amount of \$1,050.00. The 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: December 6, 2017

Residential Tenancy Branch