



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, made on November 2, 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 and the Landlord attended the hearing in person. All in attendance provided affirmed testimony.

The Tenants testified the Application package was served on the Landlord by Express Post on November 4, 2017. Although not an approved method of service under section 89 of the *Act*, the Landlord acknowledged receipt. In addition, the Landlord testified the documentary evidence upon which he intended to rely was served on the Tenants by courier. Although the Landlord was unable to provide a date of service, the Tenants advised the documents, which they received, were served by leaving a copy at the door of the rental unit. Neither party raised any issues with respect to service or receipt of the above documents during the hearing. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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.

Preliminary and Procedural Matters

The Landlord repeatedly referred to himself during the hearing as the “landlord’s agent”. This was due to the fact the tenancy agreement was between the Tenants and a company which includes the Landlord’s name. However, the Tenants submitted email communications with their documentary evidence. The emails, written by the Landlord on behalf of a company, included communications addressing the end of the tenancy, return of the “damage deposit”, the return of fobs/keys, access to the rental unit to show to prospective tenants, and a condition inspection.

Section 1 of the *Act* provides a definition of a landlord. It states:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
 - (i) permits occupation of the rental unit under a tenancy agreement,*
or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement...*

[Reproduced as written.]

Although the Landlord sought to characterize himself as merely an agent of a corporate landlord, I find that he is a landlord for the purposes of the *Act*. He communicated on behalf of the corporate landlord, and exercised powers and performed duties under the *Act* and tenancy agreement.

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 May 1, 2016. The Tenants advised that they moved out of the rental unit on September 1, 2017, but that the tenancy continued until September 30, 2017. At the end of the tenancy, rent was due in the amount of \$1,504.00 per month. The parties agreed further that the Tenants paid a security deposit of \$825.00.

The parties agreed that, on or about September 30, 2017, R.K. met with the Landlord at his office. The Landlord confirmed that R.K. asked him to send the security deposit to the workplace of J.K. The Landlord issued a cheque in the amount of \$329.40, which was sent to J.K., and retained the balance on account of alleged damage to the rental unit. The Landlord testified the Tenants were provided with copies of receipts in support of the deductions made.

Analysis

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

Landlords are not permitted under the *Act* to arbitrarily retain security and pet damage deposits. Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making 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, I find the Landlord received the Tenants' forwarding address, for the purposes of the *Act*, by September 30, 2017. As confirmed by the Landlord, the Landlord met with R.K. at the end of September 2017, at which time he was asked to send the security deposit to J.K.'s work address. The Landlord sent \$329.40 to the Tenants and retained the balance of \$495.60. Accordingly, pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to recover double the amount of the security deposit from the Landlord.

Policy Guideline #17(C)(5) provides assistance when determining a tenant's right to the return of the security deposit when part of it has already been returned to the tenant. 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 Tenants are entitled to a monetary award of \$1,320.60, which has been calculated as follows:

$$(\$825.00 \times 2) - \$329.40 = \$1,320.60$$

In addition, having been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,420.60, which is comprised of \$1,320.00 for double the security deposit (less the amount already paid) and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,420.60. 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: January 18, 2018

Residential Tenancy Branch