



Dispute Resolution Services

Page: 1

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 October 16, 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 a solemn affirmation at the beginning of the hearing.

The Tenants testified the Application package was served on the Landlord by registered mail on October 22, 2017. The Landlord acknowledged receipt. The Landlord testified her responsive documentary evidence was served on the Tenants by Purolator on January 2, 2018. The Tenants acknowledged receipt. No further issues were raised with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents 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.

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 Tenants submitted a copy of the tenancy agreement into evidence. It confirmed a fixed-term tenancy began on September 1, 2016, and ended on September 1, 2017, at which time the Tenants vacated the rental property. During the tenancy, rent was due in the amount of \$1,450.00 per month. The Tenants paid a security deposit of \$725.00, which is held by the Landlord.

The Tenants testified they provided the Landlord with their forwarding address in writing on October 6, 2017. A copy of an email message confirming the Tenants' forwarding address and requesting the return of the security deposit was submitted with the Tenants' documentary evidence.

Although the Landlord acknowledged receipt of the Tenants' forwarding address in writing on October 6, 2017, she testified there was damage to the rental unit and cleaning was required. The Tenants testified they received only one invoice related to the alleged damage and cleaning.

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 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, the Landlord confirmed receipt of the Tenants' forwarding address on October 6, 2017. Accordingly, the Landlord had until October 21, 2017, to return the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither. Instead, the Landlord arbitrarily retained the security deposit for alleged damage and cleaning in the rental unit, which the *Act* does not permit. 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.

Based on the above analysis, and pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,550.00, which is comprised of \$1,450.00 for double the amount of the security deposit (\$725.00 x 2) plus \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,550.00. 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: January 8, 2018

Residential Tenancy Branch