



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 in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that on September 21, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted with the Application were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

As the aforementioned documents were served to the Landlord in accordance with section 89 of the *Act*, the hearing proceeded in the absence of the Landlord.

The Tenants submitted an Amendment to an Application for Dispute Resolution and a Monetary Order Worksheet. The Agent for the Tenant stated that on November 07, 2017 these documents were sent to the Landlord, via registered mail, at the service address noted on the Application. The Agent for the Tenant cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents were been served in accordance with section 89 of the *Act*.

In the monetary Order Worksheet the Tenants indicate they are seeking double the security deposit, \$10.00 for a cancelled cheque, \$11.34 in mailing costs, and \$100.00 for the filing fee.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Are the Tenants entitled to compensation of \$10.00 for cancelling a cheque?

Are the Tenants entitled to compensation for mailing costs?

Are the Tenants entitled to recover the cost of filing this Application for Dispute Resolution?

Background and Evidence:

The Agent for the Tenant stated that:

- he was not a tenant in this rental unit;
- the four other parties named on this Application for Dispute Resolution were tenants in the unit;
- the Tenants entered into a verbal agreement with the Landlord;
- the parties verbally agreed that the tenancy would be for a period of 9 months;
- the tenancy was scheduled to begin on July 30, 2017;
- on July 30, 2017 the parties entered into a written tenancy agreement for a fixed term tenancy;
- the fixed term written tenancy agreement began on July 30, 2017 and ended on August 27, 2017;
- the monthly rent was \$2,200.00;
- the Tenants paid a security deposit of \$2,200.00;
- the rental unit was vacated on August 27, 2017;
- a condition inspection report was completed at the start of the tenancy;
- the rental unit was jointly inspected at the end of the tenancy but the agent acting on behalf of the Landlord did not complete a final condition inspection report;
- the female Tenant provided the Landlord with a forwarding address, in writing, on August 27, 2017;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenants are seeking to recover double the amount of the security deposit that was paid.

The Tenants are seeking compensation for a \$10.00 fee for cancelling a personal cheque. The Agent for the Tenants stated that one of the Tenants provided the Landlord with a post-dated cheque for September of 2017 when he believed the

tenancy would be for a period of 9 months. He stated that this Tenant subsequently cancelled the post-dated cheque for September to ensure it was not cashed by the Landlord.

The Tenants are seeking compensation of \$11.34 for the cost of mailing documents.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double the security deposit.

On the basis of the undisputed evidence I find that one of the Tenants provided the Landlord with a post-dated cheque for September of 2017 and that he subsequently cancelled the post-dated cheque for September to ensure it was not cashed by the Landlord. As there is no evidence before me that would cause me to conclude that the Landlord would have cashed a payment for rent for September that the Landlord was not entitled to collect, given that the tenancy ended prior to September 01, 2017, I cannot conclude that it was necessary for the Tenant to cancel his cheque.

Although it may have been prudent for the Tenant to cancel the post-dated cheque for September, I cannot conclude that the Landlord is responsible for compensating the Tenant for that expense. I therefore dismiss the Tenants' application to recover a \$10.00 cheque cancellation fee.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in these proceedings. I therefore dismiss the Tenants' claim to recover mailing costs.

Conclusion:

The Tenants have established a monetary claim of \$4,500.00, which includes double the security deposit of \$2,200.00 and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

On the basis of the undisputed evidence I find that the Agent for the Tenant was not a tenant of this rental unit and he was not named on the tenancy agreement. I therefore find that he should not be named on the monetary Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 10, 2018

Residential Tenancy Branch