



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 to obtain a return of all or a portion of her security deposit ;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided affirmed testimony. The landlord did not attend, but the landlord's witness, K.W. was present via conference call. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in person approximately on November 15, 2017 to the landlord's realtor, K.W. (the witness present). I accept the undisputed affirmed testimony of the tenants and find that both parties have been properly served as per section 88 and 89 of the Act.

After waiting 8 minutes past the start of the scheduled hearing time to allow both parties to attend and participate, the hearing proceeded in the absence of the landlord. The hearing concluded after 28 minutes with no appearance by the landlord.

During the hearing the tenants provided testimony that after the application for dispute was filed, the tenants left the country to Saudi Arabia, but had failed to file an amendment to the application for a change in address. However, the tenants confirmed that their current Saudi Arabia address was provided to the landlord on October 31, 2017 in writing for the return of the security deposit. As such, the tenants' application shall be amended to reflect the change in the mailing address.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Although this tenancy began on July 1, 2015 the current tenancy agreement began on July 1, 2017 on a fixed term tenancy ending on September 30, 2017 as found on the submitted copy of the signed tenancy agreement dated July 13, 2017. The monthly rent was \$2,200.00 payable on the 1st day of each month. The original security deposit of \$2,200.00 was paid on July 1, 2015.

The tenants claim that the tenancy ended on October 31, 2017 and the landlord was provided with their forwarding address in writing in person on October 17, 2017. The tenants claim that due to a dispute over deductions for compensation/damages to the rental unit the landlord withheld the \$2,200.00 security deposit and still holds it as of the date of this hearing. The tenant confirmed that they were aware that they had overpaid the required security deposit because the landlord would not rent to them without it. The tenants provided affirmed testimony that they had initially provided permission to the landlord to retain a portion of the security deposit regarding some cleaning expenses, but that the landlord failed to return any. The tenant provided undisputed affirmed testimony that they are not aware any an application filed by the landlord for a claim to for damages against the security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed testimony of the tenants and find that the tenancy ended on October 31, 2017 and that the tenants provided their forwarding address in writing for the return of the \$2,200.00 security deposit on October 31, 2017. I also accept the undisputed affirmed testimony of the tenants and find that although permission was given to the landlord to retain a portion of the security deposit regarding cleaning, no details or amount were specifically agreed to. On this basis, I find that the tenants are entitled to return of the \$2,200.00 pursuant to section 38 (1) of the Act.

Although the tenants provided initial permission to the landlord to retain a portion of the security deposit regarding cleaning, no specific details/amount were agreed upon. The tenants provided undisputed affirmed testimony that the landlord did not file an application for dispute of return of the security deposit in relation to a claim in damages. As such, I find that the accepted \$2,200.00 security deposit required by the landlord and paid by the tenant is subject to section 38(6) of the Act. I order the landlord to pay to the tenants an additional \$2,200.00 as compensation for failing to comply with the Act.

The tenants have established a total monetary claim of \$4,400.00. The tenants having been successful in their application are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$4,500.00.

The landlord must be served with this order. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

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: June 07, 2018

Residential Tenancy Branch