



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This decision pertains to the Tenant's application for dispute resolution made on May 25, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks a monetary order for the return of her security deposit and for recovery of the filing fee.

The Tenant and the Landlords attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for the return of her security deposit?
2. Is the Tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Tenant moved into the rental unit May 1, 2016, and vacated on May 1, 2018. Rent was \$900.00 and the Tenant paid a security deposit of \$450.00, of which the Landlords currently hold in trust. A copy of the tenancy agreement was submitted into evidence.

The parties conducted a move-out inspection on May 1, 2018, at which time the Tenant handed the Landlord (C.D.) a piece of paper on which the Tenant's forwarding address was included. The Landlord testified and acknowledged that she received the Tenant's forwarding address.

The Landlords testified that the rental unit was heavily soiled and that it needed to be

cleaned. Professional cleaning was already underway on May 1, 2018, when the inspection was done. The cost of cleaning to the Landlords was in the amount of \$250.00. The Landlords offered to return \$200.00 of the Tenant's security deposit as a compromise for their having to clean the rental unit. The Tenant refused to accept the offer, testifying that she knew that she was entitled to a return of the damage deposit unless the Landlords chose to pursue a claim against the security deposit.

The Landlords submitted that the only reason they retained the security deposit is because the rental unit was not clean.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38(1) of the Act, "*Return of security deposit and pet damage deposit*" states:

Except as provided in subsection (3) of (4)(a), within 15 days after the later of

(a) the date the tenancy ends,

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The parties both testified and acknowledged that the Landlords received the Tenant's forwarding address in writing on May 1, 2018. There was no written agreement between

the parties that the Landlords could retain any or all of the security deposit, as would be permitted under section 38(4)(a) of the Act. Finally, there is no evidence for me to find that the Landlords applied for dispute resolution within 15 days of receiving the Tenant's forwarding address.

Therefore, taking into consideration all of the evidence and testimony presented before me, and applying the law to the facts, I find the Tenant has met the onus of proving her case that she is entitled to a monetary order for the return of her security deposit.

I further find that the Landlords have not complied with section 38(1) of the Act and, pursuant to section 38(6)(b), must pay the Tenant double the amount of the security deposit for a total of \$900.00.

I grant the Tenant a monetary award of \$100.00 for recovery of the filing fee.

Therefore, pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of \$1,000.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,000.00. This order must be served on the Landlords and 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 Act.

Dated: July 20, 2018

Residential Tenancy Branch