



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This decision pertains to the tenants' application for dispute resolution made on May 23, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants seek a monetary order for the return of a security deposit and a monetary order for recovery of the filing fee.

The landlord's agent and one tenant 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

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

Background and Evidence

The tenant testified that they were in a fixed-term tenancy September 1 to December 31, 2017, inclusive, and then in another fixed-term tenancy January 1, 2018 to April 30, 2018, inclusive. Monthly rent during the first tenancy was \$750.00, due on the first of the month, and the tenants paid a security deposit of \$375.00. Monthly rent during the second tenancy was \$800.00, due on the first of the month. The security deposit was carried over from the first tenancy to the second tenancy.

The tenants submitted into evidence a copy of a written tenancy agreement for the

second tenancy.

The tenant testified that no condition inspection report was completed either at the start of the (second) tenancy or at the end of the tenancy, as is required under sections 23 and 35 of the Act. The landlord cross-examined the tenant, asking if there was an inspection done, to which the tenant answered, “correct, an inspection was done, but [there was] no report” completed.

The tenant further testified that they provided the landlord with their forwarding address on May 7, 2018, by way of a letter sent by email. The landlord received the forwarding address and responded the same day (by way of text) that he was not going to return the full amount. A copy of the letter with the forwarding address was submitted into evidence.

The landlord ended up returning \$200.00 of the security deposit, which was deposited into the tenant’s bank account by way of Interac e-Transfer on May 13, 2018. The tenants submitted into evidence a copy of an Interac e-Transfer confirmation email.

The landlord did not dispute the tenant’s testimony or documentary evidence regarding the failure to return the full security deposit. However, he endeavoured to present and introduce evidence regarding the condition of the rental unit at the end of the tenancy. I advised the landlord that as he has not made an application for a monetary order for damage or compensation under 67 of the Act, I would not hear any evidence regarding the condition of the rental unit, which is the reason he kept part of the security deposit.

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.

Regarding the return of the security deposit, section 38(1) of the Act states that

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, and (b) must pay the tenant double the amount of the security deposit.

The tenant testified, and submitted supporting documentary evidence, that the landlord received the tenants' forwarding address on May 7, 2018. The landlord did not dispute the tenant's submissions, testimony, or documentary evidence as it pertains to this issue. Further, there is no evidence before me to find that the landlord applied for dispute resolution within 15 days of receiving the tenants' forwarding address.

Therefore, taking into consideration all of the evidence presented before me, and applying the law to the facts, I find that the tenants have met the onus of proving their case that they are entitled to a monetary order for the return of the security deposit.

Given the above, I further find that the landlord did not comply with section 38(1) of the Act and, pursuant to section 38(6)(b) of the Act, must therefore pay the tenants double the amount of the security deposit.

In calculating the amount of the security deposit now owed to the tenants, I refer to page 3 of *Residential Tenancy Policy Guideline 17*, in which the following example illustrates how this calculation is made:

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 a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525 ($\$800 - \$275 = \525).

Applying the law and policy to this case, having found that the tenants paid \$375.00 as a security deposit and at the end of the tenancy the landlord held back \$200.00 without the tenants' written permission and without an order from the Residential Tenancy Branch, I double the security deposit ($\$375.00 \times 2 = \750.00), deduct the amount returned to the tenants (\$200.00), and grant the tenants a monetary award in the amount of \$550.00 ($\$750.00 - \$200.00 = \550.00)

As the tenants were successful in their application I grant them a monetary award of \$100.00 for recovery of the filing fee.

Conclusion

I hereby grant the tenants a monetary order in the amount of \$650.00. This Order must be served on the landlord and the Order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

This decision is final and binding, unless otherwise permitted under the Act, and made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: August 14, 2018

Residential Tenancy Branch