



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 tenants' application for dispute resolution made on June 25, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants seek monetary orders for the return of their security deposit and for the recovery of the filing fee, pursuant to sections 38(1) and 72(1) of the Act, respectively.

A dispute resolution hearing was convened at 1:30 P.M. on November 2, 2018. The tenant, the landlord, and the landlord's son (who assisted his mother with the proceeding because of her difficulty with English) attended the hearing, 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 with respect to the service of documents. I note, however, that the landlord submitted several documents into evidence three days before the hearing, to which I will refer later in this decision.

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

Background and Evidence

The tenants testified that they commenced tenancy on September 1, 2015, and that the tenancy ended on May 31, 2018. Monthly rent, due on the first of the month, was in the amount of \$2,200.00, later increase to \$2,500.00. The tenants paid a security deposit in the amount of \$1,100.00. No pet damage deposit was paid.

At the end of the tenancy, the tenants provided their forwarding address to the landlord by way of a written document, which they left on a counter on May 17, 2018. The document was dated May 15, 2018 and submitted into evidence. They later send an email to the landlord at the end of April 2018 in which they provided their forwarding address.

The tenant testified that there was a move-in inspection, but not a move-out inspection. Finally, the tenant stated that there was no written agreement for landlord to retain any or all of their security deposit.

The landlord's son test that when the landlord wanted to do inspection, they were unable to coordinate the time. The landlord asked the tenants to come after work, but the tenants had to leave that afternoon. According to the landlord's son, there was no forwarding address found in the rental unit.

Regarding why the landlord retained the security deposit, the son and landlord testified that the tenants had not returned both garage door openers (the remotes). The tenants never mentioned they had a cat which defecated and urinated on the carpets, which the landlord had to clean. There was a broken shelf in refrigerator. Two closet doors were removed from the tracks. Custom blinds in kitchen area had one of the cords snipped, rendering the blinds inoperable.

The landlord testified about other damages to the rental unit, including extensive water damage to the kitchen counters and cabinets.

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. In this case, the tenants are making a claim for compensation for the return of their security deposit.

Section 38(1) of the Act states as follows:

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.

Subsection 38(4)(a) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or an obligation of the tenant.

In this case, I find that the tenants have established on a balance of probabilities that the landlord received the tenants' forwarding address no later than at the end of April 2018. While the landlord disputes that they received a copy of the tenants' forwarding address in a letter left on the counter around the end of May, they did not dispute the tenant's oral evidence that the tenants gave them their forwarding address in an email sent at the end of April 2018. (The tenants did not submit a copy of the email that was sent.) Second, I find that there is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security deposit. Third, I find that there was no agreement in writing between the parties permitting the landlord to retain any amount from the security deposit.

As such, taking into consideration all the oral and documentary evidence of the parties, I find that the landlord did not comply with section 38(1) of the Act, and I therefore grant the tenants a monetary award for the return of their security deposit.

Had the landlord sought to retain any or all of the tenants' security deposit as compensation for damage allegedly caused to the rental unit, she was required to apply

for dispute resolution claiming against the security deposit within 15 days of receiving the tenants' forwarding address.

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

Having found that the landlord failed to return the security deposit in compliance with section 38(1) of the Act, I further find that the landlord must pay the tenants double the amount of the security deposit for a total of \$2,200.00. Finally, as the tenants were successful in their application, I grant them a monetary award in the amount of \$100.00 for the recovery of the filing fee. As such, and pursuant to section 67 of the Act, I grant the tenants a monetary award in the amount of \$2,300.00.

Conclusion

For reasons stated above, I grant the tenants a monetary award in the amount of \$2,300.00. I further issue an order consistent with this decision, and the order must be served on the landlord. 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, except as otherwise permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 2, 2018

Residential Tenancy Branch