



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

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

The Tenant stated that on November 16, 2018 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord stated that these documents were received on, or about December 18, 2018.

On January 11, 2019 the Landlord submitted 26 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on January 12, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 16, 2018 and January 03, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- a security deposit of \$825.00 was paid;
- a pet damage deposit of \$825.00 was paid;
- this tenancy ended on September 30, 2018;
- the Tenant provided a forwarding address, in writing, on October 24, 2018;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord returned \$825.00 of the deposits on September 30, 2018; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

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 both deposits 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 amount of the deposit that the Landlord retained after September 30, 2018, which is \$1,650.00 (\$825.00 X 2)

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.

Conclusion:

The Tenants have established a monetary claim of \$1,750.00, which includes double the deposit of \$825.00 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 that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: January 23, 2019

Residential Tenancy Branch