



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on September 24, 2018, and amended on October 12, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalf. The Landlord V.P. attended the hearing and was accompanied by M.R., agent for the Landlord S.R. All in attendance provided affirmed testimony.

The Tenants testified that the Landlords were served with the Application package and an amendment by registered mail. V.P. and M.R. acknowledged receipt on behalf of the Landlords. In addition, V.P. and M.R. testified the Landlords' documentary evidence was served on the Tenants by registered mail. The Tenants acknowledged receipt.

No issues were raised during the hearing with respect to service or receipt of the above documents. Therefore, pursuant to section 71 of the *Act*, the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit and/or pet damage deposit?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2016. The Tenants testified the tenancy ended on April 30, 2018. During the tenancy, rent was due in the amount of \$1,650.00 per month. The Tenants paid a security deposit of \$800.00, which the Landlords hold.

The Tenants' claim was summarized in the original application and amendment. First, the Tenants claimed \$4,950.00 as compensation under section 51(1) and (2) of the *Act*. The Tenants testified that the Landlords gave the Tenants a 2 month notice to end the tenancy, which had an effective date of April 30, 2018. The Tenants also testified the Landlords did not use the property for the stated purpose.

In reply, M.R. denied the Landlords issued a two month notice to end tenancy for landlord's use of property. V.P. testified she has no recollection of signing a notice to end tenancy as alleged. Further, the Landlords relied on the Tenants' documentary evidence submitted in the form of a letter dated March 30, 2018. The letter confirms the Tenants gave notice to end the tenancy effective on April 30, 2018. It states:

I am writing to give you two month's written notice to vacate [the rental property] which I currently rent from yourself. Please accept this written notice in accordance with the tenancy agreement as my intention to vacate the property on or before April 30, 2018.

Neither party submitted a copy of the alleged notice to end tenancy for landlord's use of property into evidence.

Second, the Tenants claim \$1,600.00 for the return of double the amount of the security deposit under section 38 of the *Act*. According to the Tenants, they provided the Landlords with their

forwarding address in writing in a letter dated March 30, 2018, which was emailed to the Landlords on the same date. A copy of the letter was submitted into evidence.

In reply, M.R. acknowledged receipt of the letter on March 30, 2018, and that the security deposit has not been repaid to the Tenants. He testified that the reason for withholding the security deposit is because the Landlords had to pay \$850.00 to clean the rental unit after the Tenants vacated. A receipt for the payment was submitted in support.

Finally, the Tenants claimed \$100.00 in recovery of the filing fee.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenants' claim for \$4,950.00 for compensation under section 52(1) and (2) of the *Act*, I find that compensation becomes due after a landlord issues a notice to end tenancy that complies with section 52 of the *Act*. Significantly, section 52 of the *Act* requires that a notice to end tenancy, when given by a landlord, must be in the approved form.

In this case, the Tenants asserted that the Landlords issue a notice to end tenancy for landlord's use of property. However, even though the Application was made roughly 4 months before the hearing, the Tenants did not submit a copy of this crucial document, upon which this aspect of the Tenants' claim is based, into evidence. However, the Tenants did submit a letter, dated March 30, 2018, in which the *Tenants* provided the Landlords with notice of their intention to vacate the rental unit on April 30, 2018. As a result, based on the evidence before me, I find it is more likely than not that the Tenants gave notice of their intention to vacate the rental unit on March 30, 2018. When a tenant ends a tenancy in accordance with the *Act*, they do not become entitled to compensation. This aspect of the Application is dismissed.

With respect to the Tenants' claim for \$1,600.00 for the return of double the amount of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I am satisfied the Tenants provided the Landlords with a forwarding address in writing and that it was received by the Landlords on March 30, 2018. Pursuant to section 38(1) of the *Act*, the Landlords had until April 14, 2018, to repay the security deposit to the Tenants or apply to keep it by making an application for dispute resolution. The Landlords did neither. Rather, they have retained the security deposit arbitrarily on account of cleaning costs, which is not permitted under the *Act*. Therefore, I find the Tenants are entitled to recover double the

amount of the security deposit held. Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the tenants a monetary order in the amount of \$1,700.00, which is comprised of \$1,600.00 for the return of double the amount of the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,700.00. The order 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 *Residential Tenancy Act*.

Dated: January 25, 2019

Residential Tenancy Branch