



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 14, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return the Tenant's personal property;
- 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 Tenant attended the hearing and was accompanied by K.V., her spouse. Both the Tenant and K.V. provided affirmed testimony. The Landlords did not attend the hearing.

The Tenant testified the Application package was served on the Landlords by registered mail on December 20, 2018. The Tenant submitted tracking information in support. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Landlords on December 25, 2018.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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. Is the Tenant entitled to an order that the Landlords return her personal belongings?
2. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Tenant entitled to the return of the security deposit and/or pet damage deposit?
4. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The tenancy began on June 25, 2018. During the tenancy, rent in the amount of \$2,800.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,500.00, which the Landlords hold.

First, the Tenant requested an order that the Landlords return her personal property. K.V. testified that he and the Tenant intended to vacate the rental property and began moving out in early December 2018. The Tenant acknowledged rent was not paid when due on December 1, 2018. As they were preparing to move, the Landlords removed their personal belongings from the rental unit on December 9, 2018. A list of items that have been retained by the Landlords was provided by the Tenant in a document titled, "updated (Removed Items).doc". The Tenant and K.V. testified that none of the items on the list have been returned to them, despite requests.

Second, the Tenant requested a monetary award because the Landlords had the Tenant's vehicle, which was parked in the driveway, towed from the property. K.V. testified that he has not yet recovered the vehicle due to financial constraints but that he has been informed that he would have to pay \$600.00 to recover his vehicle.

Third, the Tenant claimed the return of the security deposit. K.V. acknowledged the Landlords have not been given their forwarding address in writing because he and the Tenant were advised by police not to do so. However, K.V. confirmed the address provided in the Application is the Tenant's forwarding address.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Application.

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 Tenant's request for an order that the Landlords return her personal property, section 65(1) of the *Act* empowers the director to order that personal property seized or received by a landlord contrary to this *Act* or a tenancy agreement must be returned.

The evidence of the Tenant was unchallenged. The Landlord has seized the Tenant's belongings contrary to the *Act*. Therefore, I order that the items listed in the document titled "updated (Removed Items).doc" be returned to the Tenant forthwith. The parties are encouraged to make reasonable arrangements that enable the Tenant, or an agent of her choice, to obtain the listed items at a mutually agreed upon date, time, and location. Failure of the Landlords to do so may result in further awards in favour of the Tenant.

With respect to the Tenant's claim for \$600.00 for the cost to recover her vehicle, I find there is insufficient evidence before me to find that the Landlords were responsible for the Tenant's vehicle being towed. In addition, there is insufficient evidence in support of the value of the loss, such as a receipt or statement from the towing company. I also find the Tenant did not do what was reasonable to minimize her losses by recovering the vehicle as soon as possible after it was towed, potentially reducing the amount due. In light of the above, I find that this aspect of the claim is dismissed.

With respect to the Tenant's request for the return of the security deposit, section 38(1) confirms a landlord has 15 days after receipt of a tenant's forwarding address in writing to repay any deposits held or apply to keep them by making an application for dispute resolution. Section 38(6) of the *Act* stipulates that failure to do so creates an obligation on the landlord to pay double the amount of the deposits to the tenant. The language in the *Act* is mandatory.

In this case, K.V. confirmed that a forwarding address in writing, which triggers a landlord's obligation to act in accordance with section 38 of the *Act*, has not been provided to the Landlords. However, K.V. confirmed that the address provided with the Application is the Tenant's current address. Therefore, I find that the Tenant's forwarding address in writing will be deemed to be received by the Landlords on the earlier date one or both of them receive this Decision. To that end, I order the Tenant to

serve a copy of this Decision and order on the Landlords by registered mail. The Landlords will then have 15 days after receipt to deal with the security deposit in accordance with section 38 of the *Act*. The Tenant is granted leave to reapply for relief under section 38(6) of the *Act* if the security deposit is not returned in the required timeline.

Having been partially successful, I grant the Tenant a monetary order in the amount of \$100.00 in recovery of the filing fee.

Conclusion

The Landlords are ordered to return the items listed in the document titled “updated (Removed Items).doc” to the Tenant forthwith.

The Tenant is granted a monetary order in the amount of \$100.00. The monetary 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 29, 2019

Residential Tenancy Branch