



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OAKWYN PROPERTY MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 8, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on April 29, 2019 as a teleconference hearing. K.S. appeared on behalf of the Tenants and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 23 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that K.S. and I were the only persons who had called into this teleconference.

K.S. testified the Application and documentary evidence package was served on the Landlord in person on January 10, 2019. Based on the oral and written submissions of K.S., and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on January 10, 2019, the same day of service. The Landlord did submit documentary evidence in response to the Application; however did not appear at the hearing.

K.S. 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.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

K.S. testified that the tenancy began on September 1, 2011. Rent in the amount of \$2,200.00 was due to the Landlord on the first day of each month. K.S. stated that the Tenants paid a security deposit in the amount of \$1,100.00. K.S. stated that the tenancy ended on September 15, 2018 after the Tenants moved out of the rental unit.

K.S. testified that on September 15, 2018, she met with the Landlord's Agent to conduct a move out inspection of the rental unit. Their findings were recorded on the condition inspection report which the parties submitted in support. K.S. testified that following the inspection, the Tenants agreed to the deduction of \$30.00 relating to the replacement of light bulbs. K.S. stated that the oven in the rental unit also required further cleaning, which she had completed shortly thereafter. K.S. stated that she provided the Landlord with the Tenants' forwarding address on September 15, 2019 in writing, on the condition inspection report.

K.S. stated that she returned to the rental unit on September 24, 2018 to inspect the extra cleaning to the rental unit with the Landlord's Agent. K.S. stated that the parties agreed that the rental unit was sufficiently clean and that the only deduction to the Tenants' security deposit would be \$30.00 for the replacement of light bulbs. K.S. stated that the Landlord's Agent needed to ensure that there were no outstanding fines levied against the Tenants during the tenancy prior to the Landlord returning their security deposit. K.S. stated that the Tenants had not incurred any fines.

K.S. stated that she expected the return of the remaining portion of the Tenants' within 15 days outlined in the Act. K.S. stated that at the end of October 2018, she emailed the Landlord to enquire about the security deposit. K.S. stated that it wasn't until January 10, 2019 that they received a cheque from the Landlord in the amount of \$470.00. K.S. stated that she expected the return of \$1,070.00 as she only agreed to the \$30.00 deduction.

As a result, the Tenants are seeking the doubling of their security deposit as outlined in the Act, in relation the Landlord's failure to return the Tenants' security deposit within 15 days following the end of the tenancy. If successful, the Tenants are also seeking the return of the \$100.00 filing fee paid for the Application.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 38(1) of the Act requires a landlord to repay deposits or make 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 comply with section 38(1) of the Act, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, I find that the Tenants vacated the rental unit and provided the Landlord with their forwarding address in writing on the condition inspection report on September 15, 2019. I accept that the Tenants agreed to the deduction of \$30.00 from their deposit.

As there is no evidence before me that that the Landlord was entitled to retain the remaining portion of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the Act, that the Landlord had until September 30, 2018, to repay the remaining portion of the deposit or make an application for dispute resolution.

In light of the above, and pursuant to section 38(6) of the Act, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord, less any amounts already received.

I accept that the Landlord returned \$470.00 of the Tenants security deposit which was received by the Tenants on January 10, 2019.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator to double the amount paid as a security deposit following the agreed upon deductions ($\$1,100.00 - \$30.00 = \$1,070.00 \times 2 = \$2,140.00$), then deduct the amount already returned to the Tenants ($\$2,140.00 - \$470.00 = \$1,670.00$), to determine the amount of the monetary order.

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 find the Tenants are entitled to a monetary order in the amount of \$1,770.00.

Conclusion

The Landlord breached Section 38 of the Act. Pursuant to 67 of the Act, I grant the Tenants a Monetary Order in the amount of \$1,770.00. This order should be served on the Landlord as soon as possible and 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: May 1, 2019

Residential Tenancy Branch