



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on April 29, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- 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 N.S. and the Landlord N.I. attended the hearing at the appointed date and time, and provided affirmed testimony.

On behalf of the Tenants, N.S. testified that the Landlords were served with the Application package by registered mail. N.I. acknowledged receipt on behalf of the Landlords. No issues were raised during the hearing with respect to service and receipt of these documents. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

On behalf of the Landlords, N.I. testified the Tenants were served with the Landlords' documentary evidence by regular mail. N.S. denied receipt. However, N.I. testified the evidence package was sent to the forwarding address provided with the Application. According to the Landlord, the evidence package was returned to him and was received on June 15, 2019. A photographic image of the envelope was submitted into evidence. I find there is sufficient evidence before me to conclude the Landlords sent the evidence package to the address for service provided by the Tenants via regular mail, in accordance with the *Act*. Pursuant to section 71 of the *Act*, I find the Landlords documentary evidence package was 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. 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 an order that the Landlords return all or part of the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on November 1, 2018, and ended on March 31, 2019. During the tenancy, rent was due in the amount of \$1,400.00 per month. The Tenants paid a security deposit in the amount of \$700.00, which is held by the Landlords.

During the hearing, N.S. testified that a forwarding address was provided to the Landlords in writing on April 7, 2019. Submitted with the Landlord's documentary evidence was a hand-written letter, dated April 7, 2019, requesting the return of the security deposit and providing a forwarding address. The Landlord agreed the letter was received on April 7, 2019.

In reply, N.I. testified that the security deposit was retained because the Tenants did not pay rent in full for the last 2 months of the tenancy, and due to damage caused to the rental unit during the tenancy.

Analysis

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

Section 38(1) of the *Act* requires a landlord to repay deposits or apply to keep them by making 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. Landlords are not permitted to arbitrarily retain deposits for damage or unpaid rent, for example. When a landlord fails to repay deposits or apply to keep them, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the Tenants provided their forwarding address to the Landlords on April 7, 2019. Therefore, the Landlords did not repay the security deposit or apply to keep it by making an application for dispute resolution. Therefore, pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlords, or \$1,400.00. Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to sections 38 and 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,500.00.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,500.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: July 29, 2019

Residential Tenancy Branch