



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 24, 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 D.J. attended the hearing at the appointed date and time, and provided affirmed testimony. The Landlords did not attend the hearing.

On behalf of the Tenants, D.J. testified that the Landlords were served with the Application package by Canada Post registered mail on May 3, 2019. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. Therefore, in the absence of evidence to the contrary, I find the Application package is deemed to have been received by the Landlords on May 8, 2019. The Landlords did not submit documentary evidence in response to the Application.

On behalf of the Tenants, D.J. 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. 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

On behalf of the Tenants, D.J. testified the tenancy began on June 3, 2018, and ended on August 15, 2018. During the tenancy, rent was due in the amount of \$6,000.00 per month. The Tenants paid a security deposit of \$6,000.00, which the Landlords hold.

D.J. testified that a forwarding address was provided to the Landlords in writing on August 15, 2018. Submitted with the Tenants' documentary evidence was a copy of the letter, which D.J. confirmed was provided to the Landlords in person. The letter requests the return of the security deposit and provides a forwarding address.

The Tenants followed up with numerous written communications to the Landlords, copies of which were submitted into evidence. D.J. testified the Landlords responded with numerous excuses for retaining the deposit. For example, in an email to the Tenants dated November 5, 2018, the Landlords cited jury duty and an inability to re-rent the unit as reasons for retaining the security deposit. In an email dated January 11, 2019, the Landlords suggested they would repay the deposit as soon as they were able to re-rent the unit. D.J. testified that the Landlords have not repaid any part of the security deposit to the Tenants.

The Landlords did not attend the hearing to dispute the Tenants' evidence.

Analysis

Based on the undisputed 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 make a claim against them by filing an application for dispute resolution. Section 38(6) of the *Act* confirms that a tenant is entitled to the return of double the amount of the deposits if the landlord does not repay the deposits or make a claim against them within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. The language in the *Act* is mandatory.

In this case, I find the Tenants provided their forwarding address to the Landlords in writing on August 15, 2018. Accordingly, the Landlords had until August 30, 2018, to repay the deposit or make an application for dispute resolution. The Landlords appear to have done neither. Rather, it appears they arbitrarily retained the deposit based on factors which are of no concern to the Tenants. 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 \$12,000.00. 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 \$12,100.00.

Conclusion

The Tenants are granted a monetary order in the amount of \$12,100.00. 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 30, 2019

Residential Tenancy Branch