



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on May 6, 2019 wherein the Tenants sought return of their security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference before me at 1:30 p.m. on August 8, 2019. Only the Tenants called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:45 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package. The Tenant C.N. testified that they served the Landlord with the Notice of Hearing and the Application on May 6, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of May 11, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenants confirmed their email addresses during the hearing well as their understanding that this Decision and Order would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to return of their security deposit?
2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant C.N. testified on behalf of the Tenants in support of their claim. Also introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began December 30, 2017. Monthly rent was payable in the amount of \$1,450.00 on the 30th day of the month. The Tenants paid a \$725.00 security deposit; such payment was made as follows: \$130.00 at the time of signing and the balance of \$595.00 a few weeks later.

The tenancy ended on March 15, 2019. The Tenant stated that on March 18, 2019 he went to the Landlord to ask for return of the security deposit at which time the Landlord stated that he was not going to return it and to never contact him again. The Tenants then sent their forwarding address to the Landlord by registered mail. Introduced in

evidence was a copy of a registered mail receipt, which the Tenant, C.N. testified contained their forwarding address and was sent on April 11, 2019.

C.N. confirmed that to their knowledge the Landlord has not made an application for dispute resolution. C.N. also stated that the Landlord has not returned the security deposit.

Analysis

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that they did not agree to the Landlords retaining any portion of their security deposit.

I find that the Landlords received the Tenants forwarding address in writing on April 16, 2019 (five days after the registered mail package was sent).

I accept the Tenants' testimony that the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$1,550.00**, comprised of double the security deposit (2 x \$725.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenants application for return of double their security deposit is granted. In furtherance of this the Tenants are given a formal Monetary Order in the amount of **\$1,550.00**. The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: August 08, 2019

Residential Tenancy Branch