



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

All originally named parties attended the hearing via conference call and provided testimony, J.C., A.C., S.K., A.L. and P.B.

Discussions with all parties over a 16 minute period revealed that the tenants had inadvertently named the wrong respondents. Both tenants confirmed that their landlord is S.K. only and not A.L. and P.B. S.K. confirmed that she was the only named landlord as per the signed tenancy agreement. Both parties agreed that A.L. was S.K.'s friend and assisted her, but was not the landlord. Both parties agreed that P.B. was an agent of the named landlord's landlord. As such, both A.L. and P.B. are removed as respondents in the tenants' application by consent. Both parties were excused from the conference call hearing. The tenants stated that they would be calling, P.B. as a witness during the hearing. The hearing concluded after 38 minutes in which the tenants did not call P.B. as a witness.

The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 30, 2019. The landlord argued that no package was received. The tenants provided copies of the Canada Post Registered Mail Receipt and Tracking Label. The tenants stated that previously an online search done shows that Canada Post had left notice(s)

for the recipient to claim the package at the local postal office, but that the package was “unclaimed”. However, the landlord provided testimony that she was close friends with the previously named landlord, A.L. and that she was advised and shown the package that A.L. had received. The landlord S.K. stated that she was aware of the issues and was prepared to proceed with the hearing. I accept the testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the conclusion of the hearing, the landlord confirmed that she had moved into the bedroom previously occupied by the named tenants and that her mailing address is confirmed as that of the dispute address.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

This tenancy began on February 18, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated February 16, 2019. The monthly rent was \$950.00 payable on the 1st day of each month. A security deposit of \$475.00 was paid on February 23, 2019.

The tenants seek a monetary claim of \$950.00 for return of double the \$475.00 security deposit. Both parties confirmed that the tenancy ended on April 30, 2019 (when the tenants vacated the rental property) and that the landlord still holds the \$475.00 security deposit paid.

The tenants claim that a text message was sent to the landlord requesting the return of the security deposit. The tenants provided contradictory testimony in which they confirmed that their forwarding address in writing was not provided to the landlord at the end of tenancy.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, both parties confirmed that the tenants vacated the rental unit on April 30, 2019 and that the landlord still currently holds the \$475.00 security deposit. The tenants provided testimony that they did not provide the landlord with their forwarding address in writing for return the security deposit. As such, I find that the tenants have established a claim for return of the original \$475.00 security deposit. However, as the tenants have failed to "start the clock" regarding the 15 day limitation period, I find that the tenants have not yet complied with section 38 (1) of the Act. The tenants' request under section 38 (6) is dismissed with leave to reapply as the tenants' written request for return of the security deposit to the landlord has not yet occurred.

Conclusion

The tenants are granted a monetary order for \$475.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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 30, 2019

Residential Tenancy Branch