



Dispute Resolution Services

Page: 1

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 May 23, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing. The Landlord attended the hearing and was accompanied by T.F., her spouse. All in attendance provided affirmed testimony.

The Tenants testified that the Landlord was served with the Application package by registered mail on May 30, 2019, and that tracking information confirmed it was received by the Landlord on June 4, 2019. The Landlord agreed the Application package was received on that date. Therefore, I find the Application package was received by the Landlord on June 4, 2019.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified it was served on the Tenants by Express Post on July 29, 2019, and that tracking information confirmed it was received by the Tenants on July 30, 2019. The Tenants agreed the documentary evidence was received on that date. Therefore, I find the Landlord's documentary evidence was received by the Tenants on July 30, 2019.

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 Landlord 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

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on August 1, 2017. The parties agreed the tenancy ended on April 30, 2019, on which date the Tenants vacated the rental unit. During the tenancy, rent was due in the amount of \$2,500.00 per month. The Tenants paid a security deposit in the amount of \$1,250.00, which the Landlord holds.

During the hearing, the Tenants testified that a forwarding address was provided to the Landlord in writing. A copy of a Notice of Intent to Vacate Premises, dated March 22, 2019 (the "Notice"), was submitted into evidence. The Notice advised of the Tenants' intention to end the tenancy, requested that the security deposit be returned, and provided a forwarding address in writing. The Tenants testified the Notice was sent to the Landlord by registered mail on March 22, 2019. The Tenants also referred to a text message from the Landlord, dated March 27, 2019, which confirmed receipt of the Notice. Although the Landlord was unable to recall the specific date the Notice was received, she acknowledged it was received by March 27, 2019. The Tenants also testified that a condition inspection report was not completed by the Landlord at the beginning or the end of the tenancy.

In reply, the Landlord testified that the security deposit was retained because of the condition of the rental unit at the end of the tenancy. The Landlord and T.F. described issues that included the carpet, furniture, and the bathroom. Further, in a letter to the Tenants dated May 8, 2019, the Landlord stated: "Based on the damages and problems found on April 30, 2019, when you handed keys back, I will keep the damage deposit on hold to fix the damages and problems mentioned above." The Landlord and T.F. submitted photographic images in support of the condition of the rental unit.

The Tenants also sought to recover the filing fee paid to make the Application.

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 make an application to keep 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 do one of these two things, 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. The parties were advised that the condition of the rental unit at the end of the tenancy is not a relevant consideration on a tenant's application for the return of a security deposit.

In this case, I find the tenancy ended on April 30, 2019, pursuant to the Notice. Further, I find the Landlord received the Notice, which included the Tenants' forwarding address in writing, on or about March 27, 2019, before the end of the tenancy. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until May 15, 2019, to repay the deposit or make a claim against it by filing an application for dispute resolution. The parties confirmed that the Landlord continues to hold the security deposit, and the Landlord has not made an application for dispute resolution relating to losses arising from the tenancy. As a result, 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 Landlord, or \$2,500.00. 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 \$2,600.00.

Conclusion

The Tenants are granted a monetary order in the amount of \$2,600.00. 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: September 5, 2019

Residential Tenancy Branch