



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

RPP MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on September 13, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- An order that the Landlord return their personal property; and,
- Recovery of the cost of the filing fee.

Both the Landlord and the Tenants attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenant's Notice of Hearing package. The Tenants stated that they uploaded their evidence to the RTB website, but they did not serve the Landlord with their evidence. The Landlord confirmed that she did not receive any evidence from the Tenants. I note the following Rule of Procedure:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

Given the Tenants failed to serve their evidence to the Landlord, I find it is not admissible and will not be considered. The Landlord did not provide any documentary evidence for this hearing.

Both parties were provided the 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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to an order that the Landlord return personal property?

Background and Evidence

Both parties agree that the tenancy started at the beginning of March 2019, and ended at the end of May 2019. The parties agree that monthly rent was \$1,200.00 and that rent was due on the first of the month. Both parties acknowledge that no rental agreement was ever signed.

The Tenants stated that they paid a security deposit in the amount of \$600.00. However, they did not have any admissible documentary evidence to support this. The Landlord stated she never got a security deposit from the Tenants. The Landlord explained that she always issues receipts when tenants pay security deposits, so if they had paid, they would have a receipt to show.

The Tenants also stated that their mail was not getting delivered properly, and they assert that the Landlord had kept their mail and should return it. The Tenants stated that they confirmed with a couple different companies that mail was in fact sent to them, but it was not being delivered or received by the Tenants. The Tenants did not have any further evidence to show that the Landlord has their mail.

The Landlord stated that she has not taken any mail, and says the Tenants have made this up. The Landlord stated that the Tenants have their own mailbox, and she has no reason to take their mail.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of 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 security deposit.

In this case, I find there is insufficient evidence that the Tenants paid a security deposit. There is no written tenancy agreement, and no documentary evidence showing that the Tenants paid a deposit. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I dismiss the Tenants application for the return of the deposit, in full, without leave to reapply.

With respect to the Tenants' application for the return of their personal property, I find there is insufficient evidence to show that the Landlord took their property (mail). The Tenants have failed to provide sufficient evidence over and above their testimony to establish their claim.

The Tenants application is dismissed, in full, without leave to reapply.

Since the Tenants were not successful with their application, I decline to award the recovery of the filing fee.

Conclusion

The Tenants' application has been dismissed, in full, without leave to reapply.

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 13, 2019

Residential Tenancy Branch