



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 Tenant's Application for Dispute Resolution, made on August 7, 2019 (the "Application"). The Tenant 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 and the Landlords attended the hearing and provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Hearing package was served on the Landlords by registered mail. The Landlords acknowledged receipt. Further, the Landlords testified the documentary evidence they intended to rely upon was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues with respect to service or receipt of these documents were raised during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

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. Is the Tenant entitled to an order that the Landlords return all or part of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties confirmed the Tenant rented a room in the rental property and shared common areas with other tenants, each under a different tenancy agreement. This tenancy began on July 15, 2017 and ended on or about June 30, 2019. During the tenancy, rent was due in the amount of \$750.00 per month. The Tenant paid a security deposit in the amount of \$325.00, which the Landlords hold.

The Tenant testified that a forwarding address was provided to the Landlords in writing by leaving a letter in the Landlords' mailbox on July 15, 2019. A copy of the letter was submitted into evidence.

In reply, the Landlords confirmed receipt of the Tenant's forwarding address in writing on July 16, 2019. The Landlords also confirmed that they have kept the security deposit on account of carpet and other cleaning costs, missing lightbulbs, a broken toilet seat, and a broken kitchen faucet. In an email to the Tenant dated July 13, 2019 the Landlords stated: "it is within our rights to keep your damage deposits to cover the carpet cleaning and cleaning that wasn't done."

The Landlords testified the Tenant did not attend a scheduled condition inspection on July 1, 2019 and did not contact the Landlords to arrange another opportunity. The Tenant acknowledged she did not attend and stated she was not offered a second opportunity to participate in the condition inspection. The Landlords testified they needed to start cleaning and making repairs and could not wait.

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.

In this case, I find the Landlords received the Tenant's forwarding address in writing on July 16, 2019. Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until July 31, 2019, to repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The parties confirmed that the Landlords did not make an application for dispute resolution and continue to hold the security deposit. Although the parties agreed the Tenant did not participate in a move-out condition inspection, I find the Tenant did not extinguish her right to the return of the security deposit since the Landlords did not offer two opportunities for inspection required under section 35 of the *Act*. As stated by the Landlords during the hearing, they were in a hurry to perform the cleaning and repairs they deemed necessary.

Considering the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit held by the Landlords, or \$650.00. I also find the Tenant is entitled to recover the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$750.00 which is comprised of \$650.00 for double the amount of the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of \$750.00. 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: November 25, 2019

Residential Tenancy Branch