



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT, MNSD

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on August 15, 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;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served the Application and documentary evidence package to the Landlord by registered mail on August 28 and November 20, 2019. The Landlord confirmed receipt. The Landlord testified that he served the Tenants with his documentary evidence by registered mail on November 11 and 26, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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 Landlords return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2016. The Tenants paid rent in the amount of \$1,560.00 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$750.00 which the Landlord continues to hold. The tenancy ended on March 31, 2019.

The parties testified and agreed that the Landlord served the Tenants with a Two Month Notice to End Tenancy on March 12, 2019. The Tenant stated that they decided to comply with the Notice and move out of the rental unit on March 31, 2019. Neither party provided a copy of the Two Month Notice in their documentary evidence.

The Tenant stated that they provided the Landlord with their forwarding address on May 4, 2019 by registered mail, requesting the return of the security deposit. The Landlord confirmed receipt. The Tenant stated that no move out condition inspection was completed between the parties. The Tenant stated that the Landlord sent the Tenants an electronic transfer in the amount \$500.00 on April 9, 2019. The Tenant stated that the Landlord decided to retain \$250.00 of the \$750.00 security deposit. The Tenant stated that she notified the Landlord that she did not agree with this deduction, which resulted in the Landlord cancelling the \$500.00 deposit on April 10, 2019. The Tenant stated that to date, the Landlord has not returned any amount of the Tenants' security deposit.

The Landlord agreed that he had cancelled the \$500.00 electronic transfer as he felt entitled to retaining the Tenant's security deposit after viewing the damage caused by the Tenants' pets to the rental unit. The Landlord stated that pets were not permitted.

The Tenants are also claiming for compensation relating to the Landlord serving the Two Month Notice to End Tenancy for Landlord's Use in bad faith. The Tenants stated that the Landlord intended on renovating and moving into the rental unit following the end of their tenancy. The Tenant stated that they noticed that the Landlord had advertised the rental unit for rent which was available as of October 1, 2019. The Tenants provided a copy of the advertisement in support.

The Landlord stated that he lives out of the Country, however, often travels for work purposes and decided to move into the rental unit so that he would have his own accommodation when in town for work. The Landlord stated that he moved into the rental unit on April 1, 2019 after the

tenancy had ended. The Landlord stated that he occupied the rental unit until December 1, 2019 at which point, he decided that he would prefer to find a new occupant as he was not using the rental unit as often as he thought. The Landlord stated that a new tenancy was created on December 1, 2019.

Analysis SD

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenants' claim for the return of their security deposit, Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, the Tenants vacated the rental unit on March 31, 2019 and provided the Landlord with their forwarding address by registered mail on May 4, 2019. The Landlord confirmed receipt on the same date. As there is no evidence before me that that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until May 19, 2019, to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord (\$750.00 x 2 = \$1,500.00).

With respect to the Tenants claim for compensation, Section 51(2) of the *Act* states that in addition to the amount payable under subsection one, if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for **at least six months** beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent to 12 times the monthly rent payable under the tenancy agreement.

In this case, neither party provided a copy of the Two Month Notice to End Tenancy. The parties agreed that the Landlord served the Tenants with the Two Month Notice on March 12, 2019, before the Tenants decided to move out of the rental unit on March 31, 2019. The Landlord stated that he occupied the rental unit from April 1, 2019 to December 1, 2019 at which point he

commenced a new tenancy. The Tenant provided a copy of an advertisement which listed the rental unit as being available for October 1, 2019.

In this case, I find that even if the Landlord had listed the rental unit as being available for October 1, 2019, this date would have been over the six-month requirement that the Landlord occupy the rental unit which had been the intended purpose of the Two Month Notice. In light of the above, I dismiss the Tenants' Application for compensation without leave to reapply.

Having been partially successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,600.00.

Conclusion

The Landlord has breached Section 38 of the *Act*. The Tenants have established an entitlement to a monetary order in the amount of \$1,600.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

The Tenants have provided insufficient evidence to demonstrate that the Landlord has acted contrary to the Two Month Notice for Landlord's Use. I dismiss the Tenants Application for compensation 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: December 11, 2019

Residential Tenancy Branch