



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 Tenants' Application for Dispute Resolution, made on September 20, 2019 (the "Application"). The Tenants 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 Tenants attended the hearing on their own behalves. H.G. attended the hearing on behalf of the Landlords. The Tenants and H.G. provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Hearing package, including their documentary evidence, was served on the Landlords by registered mail on September 25, 2019. Canada Post documents were submitted in support. On behalf of the Landlords, H.G. testified that the Landlords received the Notice of Dispute Resolution Hearing documents but did not received the Tenants' documentary evidence. Nevertheless, H.G. confirmed he was prepared to proceed with the hearing despite not having receive the Tenants' documentary evidence.

On behalf of the Landlords, H.G. testified the Tenants were served with a documentary evidence package on January 19, 2020. The Tenants acknowledged receipt. I find the Landlords' documentary evidence package was received by the Tenants on that date.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. 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 Landlords 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

The tenancy agreement submitted into evidence confirms the fixed-term tenancy began on August 1, 2018 and was expected to continue to July 31, 2019. Although the parties agreed the Tenants vacated the rental unit on June 30, 2019, they disagreed with respect to the date the tenancy ended. During the tenancy, rent was due in the amount of \$2,600.00 per month. The Tenants paid a security deposit in the amount of \$1,300.00, which the Landlords hold.

On behalf of the Tenants, M.S. testified that the Tenants' forwarding address (which remains their current address) was provided to the Landlords in writing. The address was repeated aloud during the hearing. On behalf of the Landlords, H.G. confirmed receipt of the Tenants' forwarding address in writing in an email dated July 3, 2019.

In reply, H.G. testified that the security deposit has been retained because Tenants did not pay rent when due on July 1, 2019. H.G. testified the Tenants were obligated to pay rent due on that date unless they found a suitable tenant to whom the tenancy could be assigned. However, H.G. testified that the Tenants did not provide a suitable tenant and did not pay rent. H.G. advised that the Landlords are relying on the addendum to the tenancy agreement which permits the Landlords to make deductions from the security deposit if there is "past due rent money owing." The Tenants did not dispute that rent was not paid on July 1, 2019 and maintained there was an understanding between the parties to end the tenancy on June 30, 2019.

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 a 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 Tenants' forwarding address in writing was received by the Landlords on July 3, 2019. It does not matter if the tenancy ended on June 30 or July 31, 2019. Receipt of the Tenants' forwarding address in writing gave rise to an obligation on the Landlords to repay the deposit to the Tenants or make a claim against it by filing an application for dispute resolution. Even if the tenancy ended on July 31, 2019 as alleged by H.G., the Landlords had until August 15, 2019 to repay the security deposit to the Tenants or made a claim against it by filing application for dispute resolution. They have done neither.

With respect to the addendum to the tenancy agreement that purports to allow the Landlords to retain the security deposit if rent remains unpaid, I find this provision is of no force or effect. Section 20(e) of the *Act* states that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement. I find that this provision applies to unpaid rent or any other losses alleged by a landlord.

Considering the above, and 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 \$2,600.00. Having been successful, I also grant the Tenants \$100.00 in recovery of the 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 \$2,700.00.

Conclusion

The Tenants are granted a monetary order in the amount of \$2,700.00. 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: January 28, 2020

Residential Tenancy Branch