



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 11, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

This matter was set for hearing by telephone conference call at 1:30 P.M. on February 25, 2020. The line remained open while the phone system was monitored for 13 minutes and the only participants who called into the hearing during this time were the Respondents and their lawyer, T.H. Therefore, as the Applicant did not attend the hearing by 1:40 P.M., and the Respondents appeared and were ready to proceed, I dismiss the Landlord's claim without leave to reapply.

During the hearing, the Tenants advised the tenancy began on or about August 16, 2016 and ended on September 30, 2019. During the tenancy, rent in the amount of \$1,519.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$690.00, which the Landlord holds.

The Tenants requested the return of double the amount of the security deposit held by the Landlord. 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, the Tenants advised that the Landlord was provided with their forwarding address in writing in a letter dated September 10, 2019, which was prepared by their lawyer. The Tenants advised the letter was received by the Landlord within days. A copy of the letter was submitted into evidence by the Tenants. As noted above, the Tenants confirmed the tenancy ended on September 30, 2019. As a result, the Landlord had until October 15, 2019 to repay the deposit to the Tenants or make an application for dispute resolution. The Landlord made the Application before the expiry of the timeline on October 11, 2019. As a result, I find the Tenants are not entitled to the return of double the amount of the security deposit.

However, Policy Guideline #17 confirms an arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit. In this case, the Application included a request for an order permitting the Landlord to retain part of the security deposit in satisfaction of the claim. In accordance with Policy Guideline #17, I find the Tenants are entitled to the return of the security deposit held by the Landlord. Pursuant to section 67 of the *Act* and Policy Guideline #17, I grant the Tenants a monetary order in the amount of \$690.00.

Conclusion

The Tenants are granted a monetary order in the amount of \$690.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: February 25, 2020

Residential Tenancy Branch