



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1093062 BC LTD
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on October 16, 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 and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalf. The Landlord was represented at the hearing by V.W. and I.G., agents. All in attendance provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail and that Canada Post tracking information confirms these documents were received by the Landlord on October 31, 2019. V.W. acknowledged receipt on behalf of the Landlord. Therefore, I find these documents were received by the Landlord on October 31, 2019.

The Tenants testified that a further documentary evidence package was served on the Landlord by registered mail on February 25, 2019 and that tracking information confirms delivery on February 26, 2019. The Tenants provided a tracking number during the hearing which was checked on the Canada Post website. This confirmed the documents were sent and delivered as claimed by the Tenants. V.W. testified that the documents were not received and noted she was away from the office at that time. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find it is more likely than not that these documents were sent to the Landlord as claimed and are deemed to have been received by the Landlord on March 1, 2019.

The Landlord submitted documentary evidence in response to the Application. V.W. testified it was served on the Tenants by registered mail and that it was received by the Tenants on March 4, 2020. The Tenants acknowledged receipt. I find the Landlord's documentary evidence was received by the Tenants on that date.

No further issues were raised concerning service and 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 and to which I was referred. 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 Landlord 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 parties confirmed the tenancy began on September 1, 2018 and ended on September 30, 2019. During the tenancy, rent was due in the amount of \$1,750.00 per month. The Tenants paid a security deposit in the amount of \$875.00, which was returned to the Tenants on October 16, 2019.

The evidence of the parties did not differ significantly. The parties agreed that the Tenants provided the Landlord with a forwarding address in writing during the move-out condition inspection on September 29, 2019. V.W. acknowledged receipt of the forwarding address on that date and a copy of the Condition Inspection Report submitted into evidence confirms the Tenants' forwarding address was provided.

In addition, the parties agreed the Landlord sent the security deposit to the Tenants by e-transfer on October 4, 2019. However, the Tenants testified that the payment was not received. A.B. testified that on October 7, 2019 she reached out to I.G. via text message. A copy of the ensuing text message exchange was submitted into evidence.

The parties testified there was some back-and-forth between the parties while they attempted to determine why the e-transfer was not received. The text messages submitted confirm that A.B. was provided with a screen shot confirming the e-transfer on October 4, 2019. The statement submitted into evidence by the Landlord confirms the e-transfer was sent to the same email address provided by A.B. as part of the Application. In the text messages, I.W. asked A.B. to check her spam folder, confirmed that the email address on the screen shot was correct, and asked the Tenants to check with their bank. Ultimately, the source of the problem could not be determined, and a second e-transfer was sent to the Tenants on October 16, 2019, which was deposited by A.B. on the same date.

The Tenants and V.W. testified that other e-transfers were completed successfully during this time.

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 a security deposit or make an application to keep it 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 deposit.

In this case, I find the tenancy ended on September 30, 2019. Further, I find the Tenants' forwarding address in writing was received by the Landlord on September 29, 2019. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until October 15, 2019, to repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution.

On behalf of the Landlord, V.W. and I.G. testified that the security deposit was sent to A.B. by e-transfer on October 4, 2019. Documentary evidence submitted by both parties confirms the security deposit was sent as claimed. However, the Tenants assert it was not received. On behalf of the Landlord, V.W. and I.G. testified there has been no reasonable explanation given. In this case, I find there is insufficient evidence before me to conclude the Landlord did not repay the security deposit with the timeline set out in section 38(1) of the *Act*. Indeed, the parties provided documentary evidence to confirm an e-transfer was sent to A.B. on October 4, 2019. The Tenants' mere

allegation that the e-transfer was not received is insufficient to find they are entitled to the return of double the security deposit. Rather, I find this to be a case where the Landlord appears to have acted diligently to repay the security deposit to the Tenants on October 4, 2019 – four days after the end of the tenancy – and took steps to determine the reason for the payment issue when it was raised by A.B. Further, it appears the Landlord promptly arranged a subsequent e-transfer to the Tenants when the Landlord was able to cancel the first e-transfer. I note the subsequent e-transfer was deposited by A.B. on October 16, 2019.

Considering the above, I find the Tenants are not entitled to recover double the amount of the security deposit. As the security deposit has already been repaid to the Tenants, I find that the Tenants' Application is dismissed without leave to reapply.

Conclusion

The Tenants' Application is dismissed 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: March 16, 2020

Residential Tenancy Branch