



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on November 2, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on March 20, 2020 as a teleconference hearing. The Tenant appeared and provided affirmed testimony. No one appeared for the Landlords. The conference call line remained open and was monitored for 18 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 10.1 of the Rules of Procedure provides as follows:

"The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply."

As no one appeared for the Landlords during the hearing, I dismiss the Landlords' Application in its entirety without leave to reapply. As the Landlords have applied to retain the Tenant's security deposit, the hearing continued to determine if the Tenant is entitled to the return of her security deposit.

The Tenant was 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. Is the Tenant entitled to an order that the Landlords return all or part of the security deposit, pursuant to section 38 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on September 15, 2019. The Tenant was required to pay rent in the amount of \$3,300.00 to the Landlords each month. The Tenant stated that she paid a security deposit to the Landlords in the amount of \$1,650.00, which the Landlords continue to hold. The Tenant stated that the tenancy ended on October 15, 2019.

During the hearing, the Tenant stated that she provided the Landlords with her forwarding address in writing and left it in their mailbox on October 15, 2019. The Tenant stated that the Landlords received the forwarding address, as the Landlords served her with a copy of their Application and documentary evidence to her new address in relation to this dispute resolution hearing.

The Tenant stated that she did not consent to the Landlords retaining her security deposit and that to this date, she has not received any amount from the Landlords. As such the Tenant is seeking the return of double her deposit.

Analysis

Based on the documentary evidence before me for consideration 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 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 Tenant vacated the rental unit on October 15, 2019 and provided the Landlords with her forwarding address in writing on October 15, 2019 by leaving it in the Landlords' mailbox. Pursuant to Section 88 and 90 of the *Act*, I find that the Landlords are deemed to have received the Tenant's forwarding address on October 18, 2019.

As there is no evidence before me that the Landlords were 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 Landlords had until November 2, 2019, to repay the deposit or make an application for dispute resolution.

The Landlords submitted their Application for dispute resolution on November 2, 2019, which was within the 15 days permitted under Section 38 of the *Act*. As no one appeared for the Landlords during the hearing, their Application to retain the Tenant's security was dismissed without leave to reapply.

In light of the above, I find that the Tenant is entitled to the full return of her security deposit in the amount of \$1,650.00.

Pursuant to section 67 of the *Act*, the Tenant is granted a monetary order in the amount of \$1,650.00.

Conclusion

No one appeared during the hearing for the Landlords. The Landlords Application is therefore dismissed without leave to reapply. The Tenant is granted a monetary order in the amount of \$1,650.00 which represents the full return of her security deposit. 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: March 23, 2020

Residential Tenancy Branch