



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlords with the notice of hearing package via Canada Post Registered Mail on December 26, 2019. Both parties also confirmed the tenants served the landlords with the submitted documentary evidence on March 13, 2020 in person, except for a copy of the Canada Post Registered Mail Receipt and 3 photographs of text message screenshots. Both parties confirmed the landlords served the tenants with the submitted documentary evidence in person on March 13, 2020.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act, except for the tenants' copy of the Canada Post Registered Mail Receipt and 3 photographs of text message screenshots. These documents are excluded from consideration for lack of service.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of all or part of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2017 on a fixed term tenancy ending on August 1, 2019 as per the submitted copy of the signed tenancy agreement dated July 8, 2017. The monthly rent is \$2,500.00 payable on the 1st day of each month. A security deposit of \$1,250.00 was paid on July 17, 2017.

The tenants seek a monetary claim of \$1,350.00 which consists of return of the original \$1,250.00 security deposit and recovery of the \$100.00 filing fee.

Both parties confirmed the tenancy ended on August 1, 2019 and that a \$1,250.00 security deposit was paid and is currently held by the landlord. The tenants stated that their forwarding address in writing for return of the security deposit was served to the landlords on June 29, 2019 via Canada Post Registered Mail at the rental unit address. The tenants have provided a copy of the envelope returned by Canada Post which states that the package was "unclaimed". Both parties confirmed that the landlord had their mail delivered to the dispute address and that the landlords would pick up their mail a few times a month. Both parties confirmed that the landlords' mailing address provided on the signed tenancy agreement no longer applies as the landlords have since moved. The tenants also submitted a copy of the Notice to Vacate/Notice of a new forwarding address for return of the security deposit dated June 29, 2019.

The landlords dispute this claim stating that they were never served with the tenants' notice to vacate or provided in writing with their forwarding address for return of the security deposit. The landlords further argued that the tenants were provided with their forwarding address and that one of the tenants had attended in person. The landlords argued that this was proof that the landlords had provided a new mailing address to the tenants.

The landlords confirmed in their direct testimony that they did not have the tenants' permission to retain the security deposit, nor did the landlords make an application to dispute its return. The landlords stated that they had withheld the security deposit due to the damage found in the rental premises at the end of tenancy.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed that the tenancy ended on August 1, 2019 and that the landlord withheld the \$1,250.00 security deposit as of the date of this hearing.

The tenants claim that the landlords were served with the notice to vacate/forwarding address in writing for the request for the return of the security deposit via Canada Post Registered Mail on June 29, 2019. The landlords dispute this claim arguing that no package was received. In reviewing the evidence of both parties, I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlords. The tenants provided a copy of the notice to vacate/forwarding address in writing for the request for the return of the security deposit dated June 29, 2019 in conjunction with a copy of the Canada Post Registered Mail Customer Receipt as confirmation and photograph of the returned envelope which states that the package was "unclaimed". The landlords also argued that the tenants had mailed the notice/forwarding address to the wrong mailing address. The tenants stated that the landlords provided mailing address on the signed tenancy agreement was no longer valid as the landlord had moved. This was confirmed by the landlords. The tenants also stated that the landlords had their mail delivered to the dispute address on a regular basis. The landlords confirmed these details as well. Although the landlords argued that a new mailing address was provided to the tenants for the landlords' mail, the tenants disputed this claim. The landlords were unable to provide any supporting evidence regarding this notice. I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlords regarding the landlords' mailing address. Despite not receiving or claiming the package, I find that the landlords are deemed served 5 days later on July 4, 2019.

As such, I find that the tenants have provided sufficient evidence to satisfy me that the landlords fail to comply with section 38 (1) of the Act and as such, the tenants are entitled to return of the original \$1,250.00 security deposit.

Pursuant to section 38 (6) of the Act, the landlords having failed to comply with subsection 38 (1), the landlords are liable to an amount equal to the \$1,250.00 security deposit.

The tenants have established a claim for \$2,500.00. The tenants having been successful are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$2,600.00.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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 26, 2020

Residential Tenancy Branch