



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K & L VENTURES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a Tenants' Application for Dispute Resolution, filed on November 23, 2019, wherein the Tenants requested return of double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on April 27, 2020.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to return of double their security deposit?

2. Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Tenant S.B. testified as follows. She stated that the tenancy began September 1, 2017. Monthly rent \$1,950.00 and the Tenants paid a \$997.50 security deposit. A copy of the tenancy agreement was provided in evidence. The Tenants signed a further tenancy agreement in 2018. S.B. confirmed that E.F. was included as a Tenant by way of the Schedule of Parties to the 2018 tenancy agreement.

The tenancy ended on November 1, 2019.

The Tenants sent an email to the Landlord on November 2, 2019 wherein they requested their security deposit and provided the Landlord with their forwarding address. A copy of this email was provided in evidence as was the Landlord's response wherein they wrote of cleaning costs and outstanding utilities.

S.B. further testified that the Landlord did not make an application for dispute resolution, nor did the Landlord return the funds. S.B. confirmed that she spoke to the other tenants and they confirmed they did not receive the security deposit.

In reply the Landlord's representative, D.M., confirmed that the Tenants provided their forwarding address to the Landlord on November 2, 2019. D.M. further confirmed that the Landlord responded to this email.

D.M. stated that the Landlord instructed her personal assistant, T., to file for dispute resolution and T. neglected to do so. D.M. also stated that the Landlord believed she could retain the security deposit due to the damage to the rental unit and the costs she incurred to clean it.

Analysis

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that they did not agree to the Landlords retaining any portion of their security deposit.

The Tenants sent their forwarding address to the Landlord on November 2, 2019. While at the time the email was sent, email was not generally an accepted form of service pursuant to the *Act*, the Landlord confirmed receipt of the email and responded to the Tenants' request for their deposit. As such, and pursuant to section 38(1)(b) of the *Act*, I find that the Landlord received the Tenants' forwarding address in writing on November 2, 2019.

The Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants or an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$2,095.00**, comprised of double the security deposit (2 x \$997.50) and the \$100.00 fee for filing this Application.

Conclusion

The Tenants' application for return of double their security deposit and recovery of the filing fee is granted. In furtherance of this the Tenants are given a formal Monetary Order in the amount of **\$2,095.00**. The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

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: May 7, 2020

Residential Tenancy Branch