



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Charles Kim
ALS Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT, MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 7, 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;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 8, 2020 as a teleconference hearing. Only the Tenants appeared and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 10 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 Tenants and I were the only persons who had called into this teleconference.

The Tenants testified the Application and documentary evidence package was served on the Landlord by registered mail. The Tenants stated that they served the Landlord three times, once to the Landlord's Agent, once to the Landlord's address for service as indicated on the tenancy agreement, as well as once to the Landlord's address as indicated on the Land Title search. Copies of the Canada Post registered mail receipts were submitted confirming the mailings took place on December 11, 2019. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on December 16, 2019, the fifth day after their

registered mailings. The Landlord did not submit documentary evidence in response to the Application.

The Tenants were 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.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenants testified that the tenancy began on December 1, 2016 and ended on April 30, 2019. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,995.21 to the Landlord on the first day of each month. The Tenants stated that they paid a security deposit in the amount of \$925.00 which the Landlord continues to hold. The Tenants submitted a copy of the tenancy agreement in support of this testimony.

The Tenants testified that they provided the Landlord with their forwarding address in writing on April 29, 2019 prior to the tenancy ending on April 30, 2019. The Tenants stated that they have not yet received any portion of their security deposit and that they did not consent to the Landlord retaining any amount.

The Tenants stated that the Landlord had asked that the Tenant use a dehumidifier in the rental unit during the tenancy. The Tenants stated that the parties had an agreement that the Landlord would reimburse the Tenants \$40.00 every two months to compensate them for the additional hydro costs. The Tenants stated that they had to continually remind the Landlord for payments throughout the tenancy.

The Tenants stated that the Landlord did not reimburse the Tenants from December 2018 to April 2019. As such, the Tenants stated that they are owed \$100.00. The

Tenants provided an email in which they request reimbursement from the Landlord in support.

If successful, the Tenants are seeking the return of the filing fee.

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. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenants provided their forwarding address to the Landlord in writing and in person on April 29, 2019 before they vacated the rental unit on April 30, 2019. As there is no evidence before me that that the Landlord was 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 Landlord had until May 15, 2019 to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord (\$925.00 x 2 = \$1,850.00).

In relation to the Tenants' claim for \$100.00 relating to the reimbursement of the hydro costs associating with the Tenants' requirement to run a dehumidifier, I find that the Tenants provided insufficient evidence to demonstrate that the parties had agreed to the reimbursements between December 2018 to April 2019. As such, I dismiss this portion of the Landlord's claim without leave to reapply.

Having been partially successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,950.00.

Conclusion

The Landlord breached Section 38 of the Act. The Tenants are granted a monetary order in the amount of \$1,950.00. 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: May 12, 2020

Residential Tenancy Branch