



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 tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of their security deposit; and
- recovery of the filing fee.

The tenants and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their affirmed oral evidence and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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 and Procedural Matters-

The landlords presented no issues with regard to receiving the tenants' application and attached evidence. The tenants' application was filed on or about December 11, 2019.

At the beginning of the hearing, landlord's agent, SR, requested that the hearing be adjourned to a later date. SR said that the landlord's agent, JA, had been experiencing

health problems earlier, and now due to Covid-19, they have not had the opportunity to provide evidence for the hearing. JA confirmed this information.

I made the decision to proceed with the hearing, due to the matter being set for this date since December 11, 2019. I informed the landlord's agents that it did not appear their evidence would impact my Decision, as the burden of proof was on the tenants. I also informed the landlord's agents that I believed I could obtain sufficient evidence through testimony.

I also informed the landlord's agents that if that did not turn out to the case, I would make the decision to adjourn the hearing in order to allow the landlord's agents more time to submit evidence.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit and to recover the cost of the filing fee?

Background and Evidence

I heard evidence that this tenancy began on November 1, 2018 and ended on or about October 31, 2019. Monthly rent was \$2,250 and the tenants paid a security deposit of \$1,125. The tenants provided a copy of the written tenancy agreement.

The tenants submitted that they provided their written forwarding address in a letter they dropped off at the office of the landlord's agent and in an email to landlord's agent JA on November 4, 2019.

The tenants submitted copies of the email communication, one of which is JA's return email confirming receipt of the tenants' forwarding address on November 4, 2019. JA further in the email informed the tenants that they were making deductions from the tenants' security deposit and they were printing a cheque for the balance of \$362.97. JA informed the tenants that the cheque for the balance due was available at their office or they could mail the cheque to the forwarding address provided by the tenants in the November 4, 2019, email.

The tenants' monetary claim is \$1,077.97, which is the amount of their security deposit, less the amount of \$47.03 for the garage door remote key, as they agreed it was lost.

In response to my inquiry, the tenants submitted that there was no move-in inspection with the landlord and that although there was a move-out inspection, they have not received a copy from the landlord.

Landlord's agent's response-

The landlord's agent submitted that the tenants were responsible for certain costs and expenses incurred during the tenancy, and therefore, those expenses were deducted from the tenants' security deposit.

The landlord's agent submitted that one cost agreed to by the tenants was replacement of the garage door remote, as the tenants did not return it. The landlord's agent submitted that the tenants agreed to this cost on the condition inspection report (CIR).

The landlord's agent said the cheque for the balance of the security deposit was made available to the tenants at their office, but that the tenants never picked it up. The landlord's agent said the cheque was still in their office.

In response to my inquiry, the landlord's agent said she believed a move-in inspection was done with the tenants and that a move-out inspection was also conducted.

In response to another inquiry, the landlord's agent said it was possible that the tenants dropped off their written forwarding address and that she would not have seen it.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord must either repay a tenant's security deposit or file an application for dispute resolution to retain the security deposit and pet damage deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

If a landlord fails to comply with the Act, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In the case before me, the undisputed evidence shows that the tenancy ended on October 31, 2019, and that the landlord received the tenant's written forwarding address by email service on November 4, 2019. The landlord's agent responded to the tenant, confirming they received the tenants' forwarding address on November 4, 2019. The landlord's agent offered to mail the balance of the tenants' security deposit to that address.

Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlord in this case, must be given or served in the ways listed in this section of the Act. Email communication is not an approved method of delivery of those documents under the Act.

In this case, however, I considered that the tenants provided testimony, which was not disputed by the landlord's agent, that the tenants also provided their written forwarding address on a document that was left at the office of the landlord.

Nonetheless, in all cases, I order that the tenants' written forwarding address was sufficiently served on the landlord for the purposes of section 88 of the Act in the email of November 4, 2019, under section 71(1)(b) of the Act, as it was specifically confirmed by the landlord's agent in a return email.

I find the landlord was obligated to return the tenants' security deposit of \$1,125, less the agreed upon amount for the lost garage door key of \$47.03, for a total of \$1,077.97, or make an application for dispute resolution claiming against the security deposit by November 19, 2019. In contravention of the Act, the landlord made unauthorized deductions from the tenants' security deposit before making a portion of the security deposit available for pick-up, without filing an application. Making a cheque available is not the same as returning it.

I therefore find the tenants are entitled to a total monetary award of **\$2,255.94**, comprised of their security deposit of \$1,125, less the authorized amount of \$47.03, or **\$1,077.97**, doubled to **\$2,155.94**, plus the filing fee paid for this application of **\$100**, which I have awarded them due to their successful application ($\$1,125 - \$47.03 = \$1,077.97 \times 2 = \$2,155.94 + \$100 = \mathbf{\$2,255.94}$).

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

I find it important to note, that I was able to make a decision on the tenants' application without documentary evidence from the landlord, as I find nothing would change the outcome. Further, the landlord did not establish or claim they had the tenants' written authority to retain any amount from the tenants' security deposit.

I therefore did not adjourn the hearing to allow the landlord to provide documentary evidence.

Conclusion

The tenants' application for monetary compensation for a return of their security deposit, less the agreed upon amount has been granted. The remaining amount has been doubled and the tenants have been awarded recovery of their filing fee of \$100 for a total monetary award of \$2,255.94, as described above.

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 14, 2020

Residential Tenancy Branch