



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 13, 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; and
- an order granting recovery of the filing fee.

The Tenant J.M. and the Landlord's Agent V.S. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the Tenant requested an adjournment as she was not able to submit documentary evidence prior to the hearing as she did not have access to a computer.

According to the Residential Tenancy Branch Rules of Procedure (the "Rule of Procedure") 7.9, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*

- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

In this case, I find that the Tenant provided insufficient evidence to demonstrate that she was unable to submit her documentary evidence either online, or in person to Residential Tenancy Branch or a Service BC office within the time limits set out in the Act. I find that the Tenant has almost 5 months to submit her documentary and that through exercise of reasonable planning, the Tenant had sufficient time to submit documentary evidence she intended to rely on at the time of the hearing. As such, the Tenant's request for an adjournment was denied.

The parties 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 and/or pet damage 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 parties testified and agreed to the following; the tenancy began on July 2, 2019. The Tenants were required to pay rent in the amount of \$2,660.00 which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,330.00 to the Landlord. The tenancy ended on October 31, 2019.

The Tenant stated that she provided the Landlord with her forwarding address in writing on October 31, 2019 during the move out condition inspection. The Tenant stated that she sent the Landlord a request for the security deposit by registered mail on November 21, 2019 and again on December 13, 2019. The Tenant stated that she did not receive

the security deposit until March 26, 2020. As such, the Tenant feels as though she is entitled to the return of double her deposit. If successful, the Tenant is also seeking the return of the filing fee.

The Landlord's Agent confirmed having received the Tenant's forwarding address on October 31, 2019, the same date the tenancy ended. The Landlord's Agent stated that the Landlord sent the Tenants their security deposit in full on November 7, 2019 in form of a cheque to the Tenants forwarding address they provided. The Landlord provided a detailed accounting report which indicates that a cheque was issued on November 7, 2019 in the amount of \$1,330.00.

The Landlord's Agent stated that he received notification from the Tenants on November 15, 2019 stating that they had not yet received their security deposit. The Landlord's Agent stated that he re-verified the Tenants forwarding address with the Tenants, which was the same address that the security deposit was sent to on November 7, 2019.

The Landlord's Agent stated that he made several attempts at communicating with the Tenants to follow up to see if the Tenants had received their deposits. The Landlord's Agents stated that the Tenants did not respond to his communications. The Landlord provided a copy of the text messages in support.

The Landlord's Agent stated that the Landlord decided to re-issue a new cheque which was sent to the Tenants on November 26, 2019 as the first cheque had still not been deposited. The Landlord's Agent stated that they did not hear from the Tenants until they received the dispute resolution package.

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 Tenants vacated the rental unit on October 31, 2019 and provided the Landlord with their forwarding address on the same date. The Landlord's Agent confirmed receipt. I find that the Landlord had until November 15, 2019 to repay the deposit or make an application for dispute resolution.

I find that the Landlord provided sufficient evidence to demonstrate that a cheque was sent to the Tenants on November 7, 2019 which is within the 15 days permitted under the Act. I find that the Landlord made reasonable efforts to communicate with the Tenants to ensure that they received their security deposit. I find that the Tenants did not provide any evidence to support their efforts to work with the Landlord to ensure they received the security deposit. I accept that the Landlord even sent out another cheque on November 27, 2019 to further ensure the Tenants received their security deposit.

I find that it is more likely than not that the Landlord has complied with Section 38 of the Act. I am satisfied that the Tenants have since received their security deposit in full from the Landlord. As such, I dismiss the Tenants claim for the return of double their security deposit without leave to reapply. As the Tenants were unsuccessful with their Application, I find that they are not entitled to the return of their filing fee.

Conclusion

The Landlord had provided sufficient evidence to demonstrate that they complied with Section 38 of the Act. The Tenants' Application is dismissed without leave to reapply.

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 13, 2020